



Technical Report

Drafting Implementing Rules and Regulations (IRR) of the Attrition Act of 2005

by Atty. Venir Turla Cuyco

Prepared for

**Bureau of Internal Revenue
Department of Finance
Republic of the Philippines**

Submitted for review to

USAID/Philippines OEDG

15 August 2006



Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020-00 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

The EMERGE Project contracted Atty. Venir Cuyco to provide inputs to the Rewards Framework of the Performance Management System (PMS) for the Bureau of Internal Revenue (BIR) Large Taxpayer Service (LTS). In addition to his primary role, DOF Undersecretary Emmanuel Bonoan requested his assistance in drafting the Implementing Rules and Regulations (IRR) of the Attrition Act (RA 9335), which is important for the successful implementation of the BIR PMS. Atty. Cuyco's initial output was adopted as the working draft by the Technical Working Group (TWG) tasked by law to prepare the IRR. He participated in the various meetings conducted by the TWG and presided over by Undersecretary Bonoan, and continuously revised/updated the IRR taking into consideration the agreements reached during said meetings. Armed with regular updates from the TWG, Atty. Cuyco together with the Rewards Framework component team drafted the rewards framework and transitory provisions of the IRR. He was also instrumental in pushing for and maintaining the section that embodies the rewards framework in the IRR, which will enable the Commissioner of Internal Revenue to propose its adoption to the Revenue Performance Evaluation Board. The draft underwent changes during the clearance process, however, so that the final version came out somewhat different than the original draft.

The views expressed and opinions contained in this publication are those of the author and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.

Final Report

Drafting Implementing Rules and Regulations (IRR) of the Attrition Act of 2005

The following is an outline of activities involved in the drafting of the implementing rules and regulations (IRR) for Republic Act No. 9335, otherwise known as the Attrition Act of 2005.

25 April – 20 May 2005: Atty. Venir Turla Cuyco conducted research on the legislative intent behind the Attrition Act and prepared the initial working draft of the IRR. In preparing the draft, he consulted members of the Performance Management System (PMS) project team at the BIR, particularly the rewards and compensation specialists. At this stage, he also consulted then Deputy BIR Commissioner Kim Henares and then DOF Undersecretary Emmanuel Bonoan on the contents of the draft IRR.

25 May – 01 July 2005: Atty. Cuyco participated in meetings of the technical working group (TWG) created to draft the IRR. Chaired by Undersecretary Bonoan, the TWG conducted a total of 5 meetings. During this period, Cuyco conducted individual consultations with certain members of the TWG to clarify their agencies' positions and concerns on the draft IRR. He also prepared a list of outstanding issues for resolution during each meeting to assist the chair in presiding over the meeting. Moreover, he prepared updated drafts taking into consideration the points of agreement during the previous meeting. At the end of the TWG meetings, he prepared a matrix of provisions of the draft IRR, which indicates the legal bases for and explains, where necessary, the provisions. Also included in the matrix were issues flagged for the attention of the Congressional Oversight Committee mandated to approve the IRR.

2 July – 15 August 2005: Atty. Cuyco's engagement was not extended to coincide with the shepherding of the draft IRR through the approval process. As a consequence, there are provisions in the approved IRR whose provenance he could not explain to the BIR (e.g., the provision on the calculation of revenue collection net of Tax Remittance Advice), whose officials find said provisions iniquitous. Nonetheless, he worked on and finished his assigned writing portion of the Guidebook on the Large Taxpayers Service PMS.

Attached are copies of Atty. Cuyco's weekly reports during his engagement. Also attached are copies of the Guidebook portion he wrote (the appendix to Chapter 1), the list of TWG members, the matrix of IRR provisions, and his "interim" report. The interim report is so denominated because of the expectation that his engagement would be extended, but it should be deemed as his terminal report for purposes of this engagement.

15 August 2006

Attachments

1. Atty. Cuyco's Interim Report dated 4 Aug 2005
2. Draft Attrition Act IRR
3. Matrix of Issues and Proposed Amendments to Draft Attrition Act IRR
4. Matrix of Draft Attrition Act Provisions
5. List of Technical Working Group (TWG) Members
6. Salient Features of the Attrition Act
7. Final, Signed IRR of RA 9335, the Attrition Act
8. Atty. Cuyco's Weekly Reports



04 August 2005

Dr. RAMON L. CLARETE

Deputy Chief of Party

Economic Modernization Through Efficient

Reforms and Governance Enhancement (EMERGE)

Unit 2003, 139 Corporate Center, 139 Valero Street

Salcedo Village, Makati City 1227

Re: Interim Report as Legal Advisor

Dear **Dr. Clarete**:

I am pleased to submit this report on my engagement as Legal Advisor for the Department of Finance (DOF) in the drafting of the implementing rules and regulations (IRR) of Republic Act No. 9335, also known as the Attrition Act of 2005. Details of my activities under this engagement were included in the consolidated weekly and monthly reports of the BIR Performance Management System Team. For purposes of this report, I would like to state that I performed the following in the course of my engagement:

1. Prepared the working draft used by the Technical Working Group (TWG) that worked on the draft IRR for the Attrition Act;
2. Conducted research on laws related to the implementation of the Attrition Act, including congressional deliberations on the Act as well as judicial decisions on related issues;
3. Coordinated with DOF and the National Tax Research Center, which provided secretariat services to the TWG, on the conduct of TWG meetings;
4. Met with agency representatives to the TWG to discuss and clarify agency positions on the proposed draft IRR;
5. Prepared updates and a Matrix of Issues and Proposed Amendments to Draft Attrition Act IRR for the attention of DOF to help facilitate TWG discussions;
6. Provided legal advice to the TWG during meetings;
7. Revised the working draft after every TWG meeting taking into consideration the agreements and points of understanding reached during said meetings, and furnished copies of the revised draft to DOF and members of the TWG; and
8. Prepared and submitted to DOF a Matrix of Draft Attrition Act IRR Provisions that identifies the legal basis for said provisions and the outstanding issues for the attention of the Congressional Oversight Committee, and explains, where appropriate, the more significant and/or contentious provisions of the draft.

While the draft Attrition Act IRR has been approved at the TWG level, it still needs the approval of the Congressional Oversight Committee to become effective. Undersecretary Emmanuel Bonoan, who chairs the TWG, has already endorsed the draft IRR to Finance Secretary Margarito Teves who will, in turn, submit the same to the Congressional Oversight Committee.

In seeking to be inclusive in the preparation of the draft IRR and to help instill a sense of ownership among the TWG members, more meetings and discussions were conducted than was originally envisioned. Thus, additional level of effort is needed to complete the assistance to DOF in shepherding the draft IRR through the congressional approval process.

With regards to your comments on the draft IRR I earlier sent, I will make the appropriate changes in the draft and inform our DOF counterpart about the necessity of incorporating those changes. As I indicated during our meeting last 03 August 2005, I intend to request the staff of a member of the Congressional Oversight Committee to ask their principal to sponsor the amendments that we want made on the draft.

Enclosed with this report are copies of the draft Attrition Act IRR as approved by the TWG, Matrix of Issues and Proposed Amendments to Draft Attrition Act IRR, and Matrix of Draft Attrition Act IRR Provisions.

Thank you for this opportunity and I look forward to working with you again in the future.

Please accept my best regards.

Very truly yours,

VENIR TURLA CUYCO

Legal Advisor

Enclosures:

- 1. Draft Attrition Act IRR*
- 2. Matrix of Issues and Proposed Amendments to Draft Attrition Act IRR*
- 3. Matrix of Draft Attrition Act Provisions*

1 **RULES AND REGULATIONS**
2 **TO IMPLEMENT REPUBLIC ACT NO. 9335,**
3 **OTHERWISE KNOWN AS THE “ATTRITION ACT OF 2005”**
4
5

6 Pursuant to the provisions of Section 11 of Republic Act No. 9335, “An Act
7 to Improve the Revenue Collection Performance of the Bureau of Internal
8 Revenue (BIR) and the Bureau of Customs (BOC) Through the Creation of a
9 Rewards and Incentives Fund and of a Revenue Performance Evaluation
10 Board and For Other Purposes,” otherwise known as the "Attrition Act of
11 2005" (the Act), approved on January 25, 2005, and which took effect on
12 February 11, 2005, conformably to Section 15 thereof, the Department of
13 Finance (DOF), Department of Budget and Management (DBM), National
14 Economic and Development Authority (NEDA), BIR, BOC, and Civil
15 Service Commission (CSC), with the approval of the Joint Congressional
16 Oversight Committee, hereby issue the following rules and regulations to
17 implement the provisions of the Act.

18
19
20 **RULE I. GENERAL PROVISIONS**
21

22 SECTION 1. *Title.* – These rules and regulations shall be referred to as the
23 “Implementing Rules and Regulations of Republic Act No. 9335, otherwise
24 known as the Attrition Act of 2005.”
25

26 SEC. 2. *Interpretation.* – These Rules shall be interpreted in the light of the
27 Declaration of Policy found in Section 2 of the Act:
28

29 “It is the policy of the State to optimize the revenue-
30 generation capability and collection of the Bureau of Internal
31 Revenue (BIR) and the Bureau of Customs (BOC) by
32 providing for a system of rewards and sanctions through the
33 creation of a Rewards and Incentives Fund and a Revenue
34 Performance Evaluation Board in the above agencies for the
35 purpose of encouraging their officials and employees to
36 exceed their revenue targets.”
37

38 SEC. 3. *Coverage.* – These Rules shall cover all Officials and Employees in
39 the BIR and the BOC, regardless of employment status, with at least six (6)
40 months of service.

41
42 SEC. 4. *Definition of Terms.* – For purposes of these Rules, the following
43 definition of terms is hereby adopted:

44
45 (a) *Act* – refers to Republic Act No. 9335, otherwise known
46 as the Attrition Act of 2005.

47
48 (b) *Board* – refers to the Revenue Performance Evaluation
49 Board created under Section 6 of the Act.

50
51 (c) *Bureau* – refers to either the Bureau of Internal Revenue
52 or the Bureau of Customs, as the case may be.

53
54 (d) *District* –
55 In the case of the Bureau of Internal Revenue, “District” refers
56 to a revenue region: *Provided, however,* That the Large
57 Taxpayer Service shall be deemed a District for purposes of
58 the Act and these Rules.

59
60 In the case of the Bureau of Customs, “District” refers to a
61 collection district.

62
63 (e) *District Incentives* – are the rewards given to Districts that
64 exceed targets under circumstances described in Section 5 of
65 the Act.

66
67 (f) *Employee* – refers to a rank-and-file employee, regardless
68 of employment status, who was appointed to and is occupying
69 a first or second level position in the Bureau pursuant to
70 Section 8(a) and (b), Chapter 2, Subtitle A, Title I, Book V,
71 Administrative Code of 1987, Executive Order No. 292,
72 hereinafter cited as the “Administrative Code.”

73
74 (g) *Fund* – refers to the Rewards and Incentives Fund created
75 under Section 4 of the Act.

76
77 (h) *Official* – refers to an official, regardless of employment
78 status, appointed to and occupying a third level position in the
79 Bureau pursuant to Section 8 (c), Chapter 2, Subtitle A, Title
80 I, Book V, Administrative Code. This term is herein used
81 interchangeably with “Officer.”

82
83 (i) *Revenue Collection* – means the total revenues collected
84 by a Bureau as reflected in the final version of the Cash
85 Operations Report of the Bureau of the Treasury. It shall
86 also be adjusted to reflect the effects of changes in
87 macroeconomic variables such as, but not limited to, the
88 depreciation of the peso.

89
90 Additional revenues collected due to a new law enacted by
91 Congress shall not be included in the computation of a
92 Bureau’s revenue collection if the additional revenues from
93 such new law were not included in the original estimated
94 revenue collection expected of the Bureau for a given fiscal
95 year as stated in the Budget of Expenditures and Sources of
96 Financing (BESF) submitted by the President to Congress.

97
98 (A) Additional revenues shall be determined
99 by the ratio of the estimated revenues from the
100 new law to the total estimated revenues
101 inclusive of estimated revenues from the new
102 law multiplied by total estimated revenues
103 inclusive of revenues from the new law.

104
105 (B) Revenue collection shall be computed as
106 actual collections less additional revenues.

107
108 Thus, additional revenues shall be computed
109 as follows:

110
111
112
113
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115

116 **(A) Additional Revenue =**
 117

$$\frac{\text{Estimated Revenue from new measure}}{\text{BESF + Revenue from new measure}} \times \text{Actual collection}$$

118
 119 **(B) Revenue Collection = Actual collection – Additional Revenue**
 120

121 *(Example: Revenue target = P600B; Estimated*
 122 *revenue collection from new law = P60B [10%*
 123 *of revenue target]; Bureau collection = P700B;*
 124 *Excess over target for purposes of the Act =*
 125 *P40B)*
 126

$$\text{Total revenues collected by Bureau (P700B)} - \frac{\text{Estimated revenue collection from new law (P60B)}}{\text{Total estimated revenues inclusive of revenues from new law (P600B)}} \times \text{Total estimated revenues inclusive of revenues from new law (P600B)}$$

127
 128 (j) *Support Units* – are units or offices in the Bureau that
 129 provide support services to revenue collection but do not have
 130 direct revenue collection functions. Without prejudice to the
 131 creation of additional support units, or the dissolution, merger
 132 or reorganization of existing support units in the future as may
 133 be provided by law, rule or regulation, the following shall be
 134 considered Support Units for the purposes of these Rules:
 135

136 *Bureau of Internal Revenue:*
 137

138 A. Office of the Commissioner

- 139 1. Policy and Planning Service and all its Divisions
- 140 2. Large Taxpayers Service and its Divisions, except
- 141 LTAID I & II, LTCED, LTDO Makati & Cebu, and
- 142 LTFOD.

143
 144 B. Operations Group

145 Regional Office:

- 146 1. Staff of the Regional Director
- 147 2. All Divisions of the Regional Office
- 148 3. Staff of the Revenue District Office
- 149 4. All sections without Audit and/or
- 150 Collection functions

- 151
152 C, Legal & Inspection Group and all its Services and
153 Divisions
154
155 D. Resource Management Group and all its
156 Services and Divisions, and
157
158 E. Information Systems Group and all its Services and
159 Divisions.

- 160
161 Bureau of Customs
162
163 A. Office of the Commissioner
164
165 B. Internal Administration Group
166
167 C. Intelligence and Enforcement Group
168
169 D. Revenue Collection and Monitoring Group
170
171 E. Assessment and Operation Coordinating Group
172
173 F. Management Information System and Technology
174 Group

175
176 (k) *Unit* – For purposes of determining rewards and incentives
177 under Section 4 of the Act, a Unit may refer to a Service,
178 Revenue Region, District, Division, and Section, in the case of
179 the BIR, and to a Collection District, Port, and Sub-Port, in the
180 case of the BOC.

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182
183 **RULE II. ALLOCATION OF REVENUE TARGETS**
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185 **SEC. 5. *Revenue Targets.*** – Pursuant to Section 4 of the Act, revenue
186 targets shall be based on the original estimated revenue collection expected
187 of the BIR and the BOC for a given fiscal year as approved by the
188 Development Budget Coordination Committee (DBCC) as stated in the

189 Budget of Expenditures and Sources of Financing (BESF) submitted by the
190 President to Congress. The determination of whether or not a Bureau has
191 exceeded its revenue target shall be made through a comparison of such
192 Bureau's revenue collection with its revenue targets. DBCC shall formally
193 communicate the revenue targets to the Board in the BIR and the BOC and
194 these targets shall serve as the basis for implementing the Act: *Provided,*
195 That, revenue targets shall exclude estimated yields from new revenue
196 measures which, although included in the BESF, were not enacted into law:
197 *Provided, further,* That estimated yields from new revenue measures that
198 were enacted and implemented later than the original target dates in the
199 BESF shall be pro-rated accordingly.

200

201 SEC. 6. *Allocation of Revenue Targets.* – Each Bureau shall establish a
202 system for rationally allocating revenue targets among its Districts, Officials
203 and Employees.

204

205 (a) Revenue target setting for specific Districts shall consider,
206 among others, their historical record of revenue collection:
207 *Provided, however,* That target setting shall likewise consider
208 fluctuations in prior years' collections due to non-recurring
209 transactions. Non-recurring transactions shall refer to one-
210 time transactions which are substantial in amount (i.e., the
211 amount accounts for ten percent [10%] or more of a District's
212 collections for a particular month), including the following: (i)
213 capital gains taxes from the sale of real property or shares of
214 stocks (on a per transaction basis), (ii) documentary stamp
215 taxes, (iii) estate and donor's taxes, and (iv) special projects
216 (e.g., the Bureau of Internal Revenue's voluntary assessment
217 program). Transfer of taxpayers from one District to another,
218 when such taxpayers account for at least five percent (5%) of
219 such District's collections for the previous year, shall be taken
220 into consideration in the allocation of targets among Districts.

221

222 (b) Similarly, target setting for individual Officials and
223 Employees shall consider, among others, their historical
224 record of revenue collection or that of the previous incumbent
225 of the position in the case of new appointees or newly-
226 assigned Officials and Employees. The system for allocating

227 revenue targets at the level of Officials and Employees shall
228 strive towards the ability to ascribe changes in taxpayer
229 behavior to specific actions of Bureau Officials and
230 Employees. Such system shall therefore evolve from, and be
231 based on, a better understanding of taxpayer behavior that
232 enables the Bureau to predict and assess such behavior to a
233 reasonable extent. Predictability of taxpayer behavior is
234 necessary if the allocation of revenue targets among Bureau
235 Officials and Employees is to have reasonable basis.

236

237 *SEC. 7. Reporting of Revenue Targets Distribution.* –The distribution of
238 revenue targets shall be reported according to the following rules:

239

240 (a) Pursuant to Section 4 of the Act, the BIR and the BOC
241 shall submit to the DBCC the distribution of the agencies’
242 revenue targets as allocated among its revenue Districts in the
243 case of the BIR, and the collection Districts in the case of the
244 BOC.

245

246 (b) For purposes of determining accomplishment of
247 individual revenue collection targets, the BIR and the BOC
248 shall likewise submit to their respective Boards the
249 distribution of revenue targets as allocated among Officials
250 and Employees who have revenue collection functions and as
251 reflected in their individual performance contracts.

252

253

254 RULE III. REWARDS AND INCENTIVES FUND

255

256 *SEC. 8. Creation and Source.* – The Rewards and Incentives Fund, created
257 under Section 4 of the Act, shall be sourced from the collection of the BIR
258 and the BOC in excess of their respective revenue targets of the year, as
259 determined by the DBCC. The Fund shall be calculated according to the
260 following percentages:

261

262	<u>Excess of Collection Over</u>	<u>Percent (%) of the Excess</u>
263	<u>the Revenue Targets</u>	<u>Collection to Accrue</u>
264		<u>to the Fund</u>

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30% or below	-	15%
More than 30%	-	15% of the first 30% plus 20% of the remaining excess.

SEC. 9. *Automatic Appropriation of the Fund.* – Pursuant to Section 4 of the Act, the Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.

SEC. 10. *Allocation, Distribution and Release of the Fund.* – The Fund shall be allocated, distributed and released by the Board in each agency, in accordance with these Rules and the rules and regulations issued by the Board.

SEC. 11. *Submission of Expenditure Plans.* – At the beginning of the fiscal year, each Bureau shall submit to its Board an expenditure plan that shall govern the utilization of the Fund in the event the Bureau exceeds its target.

SEC. 12. *Distribution of Rewards and Incentives.* – Rewards and incentives from the Fund shall be apportioned among the various Units, Officials and Employees of the BIR or the BOC, as the case may be, in proportion to their relative contribution to the aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by the two bureaus, respectively. The Commissioner shall submit for the approval of the Board the proposed distribution of rewards and incentives from the Fund in accordance with the following framework and such other rules and regulations as may be issued by the Board:

- (a) Unit rewards and incentives –
 - (i) Unit rewards and incentives shall be determined based on a particular Unit’s relative contribution to the aggregate amount of excess revenue collection of the Bureau: *Provided, however,* That a Unit shall not be entitled to

303 rewards and incentives even if the Bureau as a
304 whole meets its revenue target if such Unit fails
305 to meet its own revenue collection target. For
306 the purposes of these Rules, a Unit's relative
307 contribution to the aggregate amount of the
308 Bureau's excess shall be a function of the
309 percentage of such Unit's excess collection over
310 its target.

311
312 (ii) Support Units shall not be entitled to unit
313 rewards and incentives.

314
315 (b) Individual rewards and incentives –

316
317 (i) Individual rewards and incentives shall be
318 calculated in accordance with an Official's or
319 Employee's relative contribution to the
320 aggregate amount of excess revenue collection
321 of the Bureau: *Provided*, That such relative
322 contribution shall be reflected in each Official's
323 or Employee's performance evaluation rating,
324 which rating, in the case of Officials and
325 Employees who have revenue collection
326 functions, shall take account of the performance
327 rating of their respective units: *Provided*,
328 *further*, That higher rewards and incentives
329 shall accrue to Officials and Employees who
330 exercise greater responsibilities; hence, those
331 who occupy higher ranks shall correspondingly
332 be entitled to greater rewards and incentives:
333 *Provided, furthermore*, That individuals holding
334 positions subject to attrition as provided for in
335 Section 17, Rule V of these Rules shall be
336 entitled to an additional premium in view of the
337 risk of attrition inherent in such positions:
338 *Provided, finally*, That an Official or Employee
339 who is transferred in the middle of the period

340 shall be entitled to a pro-rata share in the
341 rewards.

342
343 (ii) For purposes of rewards and incentives for
344 Officials and Employees who provide support
345 services to revenue collection but do not have
346 direct revenue collection functions, the same
347 shall be determined through the Performance
348 Management System to be adopted by the Board
349 for a particular Bureau in accordance with the
350 provisions of Section 7 of the Act. This
351 provision shall apply equally to Officials and
352 Employees in Support Units as well as to those
353 providing support services in Districts.

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356 **RULE IV. DISTRICT INCENTIVES**

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358 *SEC. 13. Creation and Source of District Incentive.* – (a) In the event that
359 the BIR or the BOC fails to meet its revenue target by less than ten percent
360 (10%), Districts, which exceed their respective allocations of the revenue
361 target (allocated target), shall be entitled to rewards and incentives (District
362 Incentive) amounting to ten percent (10%) of the excess over its allocated
363 target: *Provided, however,* That any BIR revenue District or BOC collection
364 office which deliberately foregoes any revenue collection in any given year
365 as part of a scheme to avoid a higher allocated target for the subsequent year
366 shall not be entitled to a District Incentive in such subsequent year
367 notwithstanding its having exceeded its allocated target: *Provided, further,*
368 That the allocated target of any such District shall have been reported to and
369 validated by the DBCC as required in Section 4 of the Act.

370
371 (b) A District shall be deemed to have deliberately foregone revenue
372 collection when, after it has reached or exceeded its annual target before the
373 end of the year, its collection for the remaining period decreases
374 significantly as compared to its collection for the same period in the previous
375 year: *Provided,* That the remaining period shall at least be one (1) month. A
376 decrease in collection of at least twenty percent (20%) shall be deemed

377 significant unless extenuating circumstances similar to those enumerated in
378 Section 18, Rule V are determined by the Board to be present.

379

380 SEC. 14. *Automatic Appropriation of District Incentive.* – The district reward
381 shall be deemed automatically appropriated the year immediately following the
382 year when the revenue collection target was exceeded and shall be released in
383 the same fiscal year. For this purpose, the proposed annual budgets of the BIR
384 and the BOC shall respectively incorporate an item that allocates an amount to
385 cover the District Incentive taking into account the performance of the districts,
386 among others: *Provided*, That in the event the actual District Incentive exceeds
387 the amount appropriated for said purpose in the budget, the difference shall be
388 added to the proposed allocation for the District Incentive in the succeeding
389 year’s budget of the Bureau.

390

391 SEC. 15. *Allocation, Distribution and Release of District Incentive.* – The
392 allocation, distribution and release of the district reward shall likewise be
393 prescribed by the rules and regulations of the Board.

394

395 SEC. 16. *Submission of Expenditure Plans.* – At the beginning of the fiscal
396 year, each District shall submit to the Commissioner an expenditure plan that
397 shall govern the utilization of the District Incentive in the event the District
398 becomes entitled to said incentive.

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400

401 RULE V. ATTRITION AND OTHER PENALTIES

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403 SEC. 17. *Personnel Subject to Attrition.* – For purposes of paragraph (b),
404 Section 7 of the Act, personnel subject to attrition shall be Officials and
405 Employees, including District heads and assistant heads, who have revenue
406 collection targets as reflected in their performance contracts. In the case of
407 the BIR, they shall also include revenue district officers and their assistants,
408 supervisors and revenue officers who are assigned individual collection
409 targets. In the case of the BOC, they shall include district/port collectors and
410 their deputies, as well as customs officers assigned in services, divisions or units
411 with collection targets and directly performing assessment and collection
412 functions. The Commissioner shall submit to the Board, not later than the
413 end of the first quarter of the fiscal year, a list of Bureau personnel subject to
414 attrition.

415

416 SEC. 18. *Ground for Termination.* – An Official or Employee of the Bureau
417 may be separated or removed from the service by the final decision of the
418 Board, upon the recommendation of the Commissioner, when the revenue
419 collection performance of such Official or Employee falls short of the target
420 by at least seven and a half percent (7.5%), with due consideration of all
421 relevant factors affecting the level of collection as provided in these Rules,
422 subject to civil service laws, rules and regulations and compliance with
423 substantive and procedural due process: *Provided, however,* That final
424 decisions of the Board in this instance shall be immediately executory:
425 *Provided, further,* That the determination of the revenue collection
426 performance of an Official or Employee shall include payments using tax
427 credit certificates (TCCs): *Provided, furthermore,* That the following
428 exemptions shall apply:

429

430 (a) Where the District or area of responsibility is newly-
431 created, not exceeding two years in operation, and has no
432 historical record of collection performance that can be used as
433 basis for evaluation. A District or area of responsibility shall
434 be deemed newly-created when it is established where no
435 District or area of responsibility previously existed, or is
436 carved out of the jurisdiction of an existing District or
437 Districts or of an area or areas of responsibility, or is the result
438 of the merger of two (2) or more Districts or areas of
439 responsibility; and

440

441 (b) Where the Official or Employee is a recent transferee in
442 the middle of the period under consideration unless the
443 transfer was due to nonperformance of revenue targets or
444 potential nonperformance of revenue targets: *Provided,*
445 *however,* That when the District or area or responsibility
446 covered by Officials or Employees has suffered from
447 economic difficulties brought about by natural calamities or
448 *force majeure* or economic causes as may be determined by
449 the Board, termination shall be considered only after careful
450 and proper review by the Board. For the purpose of this
451 provision, “middle of the period” shall be deemed as referring
452 to at least one-half of the period under consideration.

453
454 The performance of Officials and Employees who are
455 transferred due to nonperformance of revenue targets or
456 potential nonperformance of revenue targets shall be evaluated
457 using their performance in their current and previous
458 assignments on a pro-rata basis: *Provided*, that the power to
459 transfer personnel due to nonperformance of revenue targets or
460 potential nonperformance of revenue targets as embodied in
461 Section 7(b)(2) of the Act shall be without prejudice to the
462 power of the Commissioner of Internal Revenue to assign or
463 reassign internal revenue Officers and Employees under
464 Sections 16 and 17 of the National Internal Revenue Code or
465 to the power of the Commissioner of Customs to assign
466 Employees under Section 703 of the Tariff and Customs Code
467 of the Philippines, in the best interest of the service and as
468 often as the exigencies of the service may require.

469
470 SEC. 19. *Relevant Factors Affecting Collection.* – For purposes of Section
471 7(a) of the Act and Section 18 of this Rule, the Board shall consider the
472 following, among others, as relevant factors affecting the level of collection:
473 *Provided*, That these factors were not taken into account in setting BESF
474 targets:

475
476 (a) Enactment of a law that repeals revenue measures, reduces
477 tax and tariff rates, grants tax exemptions, or otherwise results
478 in the diminution of the tax base or of taxable transactions and
479 activities, including the entry into force of a treaty or an
480 international agreement that the Philippines entered into
481 resulting in preferential treatment for certain taxpayers or
482 transactions: *Provided*, That the Board shall have the final
483 authority to determine the affected District or Districts as well
484 as the amount of revenues deemed foregone due to such
485 enactment or entry into force;

486
487 (b) Reduction by the President of tariff rates under Section
488 401 of the Tariff and Customs Code of the Philippines; and
489

490 (c) Exercise by the President of the power to open or close
491 any port of entry under Section 702 of the Tariff and Customs
492 Code of the Philippines.

493

494 SEC. 20. *Right to Appeal.* -- An Employee whose employment is terminated
495 by virtue of the decision of the Board pursuant to paragraphs (b) and (c),
496 Section 7 of the Act and to Section 18, Rule V of these Rules may appeal to
497 the Civil Service Commission (CSC) proper while an Official may appeal
498 such decision to the Office of the President within fifteen (15) days from
499 receipt of the denial of the Motion for Reconsideration of the Board's
500 decision.

501

502 SEC. 21. *Non-Disciplinary Nature of Removal.* – Employees and Officials of
503 the Bureau who are removed from the service by virtue of Section 7(a) of the
504 Act shall be deemed dropped from the rolls in accordance with Civil Service
505 laws, rules, and regulations.

506

507 SEC. 22. *Application of Other Laws on Accountability.* – The application of
508 the criteria for separation of an Official or Employee from the service under
509 the Act shall be without prejudice to the application of other relevant laws
510 on accountability of public Officers and Employees, such as Republic Act
511 No. 6713 (Code of Conduct and Ethical Standards of Public Officers and
512 Employees) and Republic Act No. 3019 (Anti-Graft and Corrupt Practices
513 Act), as amended.

514

515 SEC. 23. *Penalties Other Than Termination.* – The power of the Board to
516 remove personnel pursuant to Section 7 of the Act shall be without prejudice
517 to the power of the Commissioner to discipline Bureau personnel in
518 accordance with the provisions of Rule IX of the Omnibus Rules
519 Implementing Book V of Executive Order No. 292 (series of 1987), as
520 amended, and other Civil Service laws, rules and regulations.

521

522

523 RULE VI. REVENUE PERFORMANCE EVALUATION BOARD

524

525 SEC. 24. *Composition.* – Pursuant to Section 6 of the Act, the BIR and the
526 BOC shall each have a Revenue Performance Evaluation Board, which shall
527 be composed of the Secretary of the Department of Finance (DOF) or his/her

528 Undersecretary as the Chairman; the Secretary of the Department of Budget
529 and Management (DBM) or his/her Undersecretary; the Director General of
530 the National Economic and Development Authority (NEDA) or his/her
531 Deputy Director General; and as nonvoting members the Commissioners of
532 the BIR and the BOC, or their Deputy Commissioners; two representatives
533 from the rank-and-file Employees; and a representative from the Officials,
534 both of whom shall be duly nominated by their respective recognized
535 organization.

536

537 SEC. 25. *Powers and Functions.* -- The Board in the agency shall have the
538 following powers and functions:

539

540 (a) To prescribe the rules and guidelines for the allocation,
541 distribution and release of the Fund due to the Bureau as
542 provided for in Section 4 of the Act and for the allocation,
543 distribution and release of the District Incentive due to a
544 District as provided for in Section 5 of the Act: *Provided,* That
545 the rewards under the Act may also take the form of
546 nonmonetary benefits such as, but not limited to, official
547 recognition in the form of plaques, citations, and
548 commendations; added perks and privileges in the form of
549 paid memberships in sports and recreation clubs, special
550 parking spaces, and access to executive lounges; and
551 additional benefits in the form of paid vacation, travel, and
552 foreign training: *Provided, further,* That Unit rewards and
553 incentives shall not be distributed as additional salaries or
554 added remuneration for such Unit's Officials and Employees;

555

556 (b) To set the criteria and procedures for removing from the
557 service Officials and Employees whose revenue collection
558 falls short of the target in accordance with Section 7 of the
559 Act;

560

561 (c) To terminate personnel in accordance with the criteria
562 adopted in the preceding paragraph;

563

564 (d) To prescribe a system for performance evaluation that
565 shall be administered in such manner as to continually foster

566 the improvement of individual efficiency and organizational
567 effectiveness through the use of performance measures that
568 include, but are not limited to, the following indicators:
569 financial target, taxpayer compliance and satisfaction, process
570 improvement, and organizational wellness;

571
572 (e) To perform such other functions as are necessary or
573 incidental to its mandated functions, including the issuance of
574 rules and regulations for the proper conduct of its functions;
575 and

576
577 (f) To submit an annual report to the Congress.
578

579 SEC. 26. *Secretariat Support to and Budget of the Board.* – There is hereby
580 created a Secretariat to support the operations of the Boards. The budget to
581 cover the expenses of the Boards and the Secretariat shall be included in the
582 annual appropriations of the DOF. The Boards and the Secretariat shall be
583 under the DOF for purposes of administrative supervision.
584

585
586 RULE VII. LIABILITY OF OFFICIALS, EXAMINERS AND
587 EMPLOYEES OF THE BIR AND BOC
588

589 SEC. 27. The officials, examiners, and employees of the Bureau of Internal
590 Revenue and the Bureau of Customs who violate the Act or who are guilty of
591 negligence, abuses or acts of malfeasance or misfeasance or fail to exercise
592 extraordinary diligence in the performance of their duties shall be held liable
593 for any loss or injury suffered by any business establishment or taxpayer as a
594 result of such violation, negligence, abuse, malfeasance, misfeasance or
595 failure to exercise extraordinary diligence.
596

597
598 RULE VIII. PERFORMANCE REPORT
599

600 SEC. 28. *Report on Bureau Performance.* -- The Commissioners of the BIR
601 and the BOC shall regularly file a report with the Board stating therein the
602 status of collection in their respective agencies, and in the event of shortfall
603 or surplus, the source of the shortfall or surplus, the personnel in-charge of

604 the Unit, his/her explanation for the shortfall or surplus and his/her
605 recommendation as to the remedial course of action in cases of shortfall, and
606 in the case of the year-end report the names of Officers and Employees who
607 are recommended for termination or reward.

608

609 The report shall be submitted semi-annually with the last report to be
610 annualized. A copy of the report shall be submitted to Congress within two
611 months after the period ends.

612

613 SEC. 29. *Report on Commissioner's Performance.* – In the event of a
614 shortfall in the national target, a separate report shall be submitted by the
615 voting members of the Board to the Office of the President containing its
616 evaluation of the performance of the Commissioner concerned on the basis
617 of which the President may pursue a course of action consistent with the
618 national interest. Said reports shall likewise be furnished to Congress.

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RULE IX. FINAL PROVISIONS

622

623 SEC. 30. *Transitory Provisions.* – For purposes of attrition under Section 18,
624 Rule V of these Rules, the basis for evaluating the performance of revenue-
625 collecting personnel shall be their individual performance contracts, pending
626 the adoption of a system that rationally allocates revenue targets at the level
627 of Officials and Employees as provided for in Section 6(b), Rule II of these
628 Rules: *Provided, however,* That within one (1) year from the effectivity of
629 these Rules, the Board shall, upon the recommendation of the Commissioner,
630 adopt a system for rationally allocating revenue targets at the level of
631 individual personnel.

632

633 SEC. 31. *Separability Clause.* – Should any provision herein be subsequently
634 declared invalid or unconstitutional, the same shall not affect the validity or
635 legality of the other provisions.

636

637 SEC. 32. *Repealing Clause.* – Pursuant to Section 14 of the Act, all laws,
638 presidential decrees, executive orders, other executive issuances, rules and
639 regulations or parts thereof, including the provisions of Section 285 of
640 Republic Act No. 8424, which are inconsistent with the Act are thereby
641 repealed, amended or modified accordingly.

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SEC. 33. *Effectivity.* -- These Rules shall take effect on the fifteenth (15th) day from the date of their publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

[Place], [Date of issuance]

Secretary	Secretary
Department of Finance	Department of Budget and Management

Director General	Chairperson
National Economic and Development Authority	Civil Service Commission

Commissioner	Commissioner
Bureau of Internal Revenue	Bureau of Customs

Approved by the Joint Congressional Oversight Committee
this [Date of approval]

Issues and proposed amendments to draft Attrition Act IRR

Issue	Proposed amendment	Remarks
1. Of the Bureau’s revenue collections, how much do we ascribe to the passage of a new revenue measure?	<u>Insert as last sentence of paragraph (i), Section 4, Rule I:</u> “On the other hand, if additional revenues from the new law were included in the original estimated revenue collection expected of the Bureau for a given fiscal year, then Revenue Collection, for the purposes of the Act and these Rules, shall be deemed as the ratio of actual collection to the total estimated revenue collection for said fiscal year (i.e., actual collection plus estimated yields from the new revenue measure.”	As suggested by Director Isorena and agreed upon during the 01 June 2005 TWG meeting
2. Define the term “unit” since it is mentioned repeatedly in the proposed Rules.	<u>Insert as paragraph (k), Sec. 4, Rule I:</u> “(k) <i>Unit</i> – refers to a District as well as to an office whose function is to oversee the operations of a District or Districts and whose revenue target, in the case of an office supervising multiple Districts, is an aggregate of the revenue targets of the Districts it oversees.”	As suggested by Dir. Isorena during the 01 June 2005 TWG meeting.

Issue	Proposed amendment	Remarks
<p>3. Indicate in the Rules that it is the Development Budget Coordinating Committee (DBCC) that sets the budget for the BIR and the BOC.</p>	<p><u>Amend the second sentence of Sec. 1, Rule II to make it read as follows:</u> “Pursuant to Section 4 of the Act, revenue targets shall be based on the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as set by the Development Budget Coordinating Committee (DBCC) and as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress.”</p>	<p>Per NEDA’s comment contained in its letter to USEC. Bonoan dated 24 May 2005.</p>
<p>4. DBCC should communicate to the Revenue Performance Evaluation Boards (RPEB) the revenue targets of their respective Bureaus.</p>	<p><u>Insert as the last sentence of Sec. 1, Rule II the following:</u> “DBCC shall, for records purposes, formally communicate the revenue targets to the Board in the BIR and the BOC.”</p>	<p>As suggested by USEC. Bonoan during the 01 June 2005 TWG meeting</p>
<p>5. Reference to NEDA’s sectoral projections in establishing district targets should be deleted.</p>	<p><u>Delete the following words from Sec. 2(a), Rule II:</u> “but also NEDA’s projections for industries and economic sectors whose revenues are assigned to such Districts for collection:”</p>	<p>Per NEDA’s letter dated 23 May 2005</p>

Issue	Proposed amendment	Remarks
<p>6. Whether or not the proposed Rules should contain the framework for the allocation of rewards</p>	<p>Note that the proposed rewards framework is contained in Sec. 4, Rule III.</p>	<p>Per NEDA’s letter of 23 May 2005, calculating the rewards is too operational for the Board to undertake. NEDA suggests that the Board be tasked instead to evaluate the soundness and consistency of the schedule with approved framework and criteria for the grant of rewards and incentives to be submitted to the BIR and BOC.</p>
<p>7. Whether or not an official or employee who is transferred in the middle of a period notwithstanding outstanding performance should be entitled to rewards</p>	<p><u>Insert the following as the last proviso to paragraph (b)(i), Sec. 4, Rule III:</u> <i>“Provided, finally, That an official or employee who is transferred in the middle of the period shall be entitled to a pro-rata share in the rewards.”</i></p>	<p>As agreed upon during the 01 June 2005 TWG meeting.</p>
<p>8. Whether or not a district should be entitled to the District Incentive even if the Bureau’s shortfall is higher than 10%</p>		<p>NEDA, per its letter dated 23 May 2005, suggests that a district that exceeds its collection target should be entitled to the District Incentive to encourage said district to continue improving its performance regardless of the amount of the shortfall of the Bureau.</p> <p>This suggestion may be legally indefensible in the face of the explicit floor (shortfall not to exceed 10%) indicated in Sec.5 of R.A. 9335.</p>

Issue	Proposed amendment	Remarks
<p>9. When is a district deemed to have deliberately foregone revenue collection?</p>	<p>Note that Sec. 1(b), Rule IV states: “(b) A district shall be deemed to have deliberately foregone revenue collection when, after it has reached or exceeded its annual target before the end of the year, its collection for the remaining period decreases significantly as compared to its collection for the same period in the previous year: <i>Provided</i>, That the remaining period shall at least be one (1) month. A decrease in collection of at least ten percent (10%) shall be deemed significant unless extenuating circumstances similar to those enumerated in Section 3, Rule V are determined by the Board to be present.”</p>	<p>NEDA believes that two consecutive years of below-target performance may be deemed as deliberately foregoing collections. See letter dated 23 May 2005.</p>
<p>10. Since the Bureau has no excess collection, where will the government get the money for the District Incentive?</p>	<p><u>Add the following as the second sentence to Sec. 2, Rule IV:</u> “Since in this instance there is no excess in Bureau collections from which the District Incentive could be taken, the proposed annual budgets for the BIR and the BOC shall respectively incorporate an item that allocates an amount to cover the District Incentive: <i>Provided</i>, That in the event the actual District Incentive exceeds the amount appropriated for said purpose in the</p>	<p>As suggested by USEC. Pascua during the 01 June 2005 TWG meeting</p>

Issue	Proposed amendment	Remarks
	budget, the difference shall be added to the proposed allocation for the District Incentive in the succeeding year's budget of the Bureau."	
11. Whether or not the District Incentive under Section 5 of R.A. 9335 is meant to be shared, similar to the intent in Section 4, among the units, officials and employees of the Bureau		Usec. Pascua suggested during the 01 June 2005 TWG meeting that the District Incentive should also be shared between units and personnel similar to the sharing of rewards in Section 4 of the Act. See, however, the provisions of Section 5, R.A. 9335.
12. How should the districts spend the District Incentive?	<u>Add the following as Sec.4 to Rule IV:</u> "SEC. 4. <i>Submission of Expenditure Plans.</i> – At the beginning of the fiscal year, each District shall submit to the Commissioner an expenditure plan that shall govern the utilization of the District Incentive in the event the District becomes entitled to said incentive."	As suggested by USEC. Bonoan during the 01 June 2005 TWG meeting
13. Who is subject to attrition under the Attrition Act?	<u>Add the following as the last sentence to Sec.1, Rule V:</u> "The Commissioner shall submit to the Board, not later than the	As suggested by Usec. Bonoan during the 25 May 2005 TWG meeting. The proposed period of submission takes into

Issue	Proposed amendment	Remarks
	end of the first quarter of the fiscal year, a list of Bureau personnel subject to attrition.”	consideration the need for targets to be in place before the list of personnel subject to attrition could be made.
14. Who has the power to remove personnel under the Attrition Act?	The Board, upon the recommendation of the Commissioner, has the power to remove personnel. See Sec.2, Rule V.	As agreed upon during the 01 June 2005 TWG meeting
15. Should the Board remove personnel on grounds other than failure to meet revenue targets by at least 7.5%?	No. The usual disciplinary procedures apply. Delete paragraphs (b) and (c) of Sec. 2, Rule V.	As agreed upon during the 01 June 2005 TWG meeting
16. Who appeals to the Civil Service Commission? Who appeals to the Office of the President?	<u>Amend Sec. 4, Rule V to read as follows:</u> “SEC. 4. <i>Right to Appeal.</i> -- An employee whose employment is terminated by virtue of the decision of the Board pursuant to paragraph (a), Section 2, Rule V of these Rules may appeal to the Civil Service Commission (CSC) proper while an official may appeal such decision to the Office of the President.”	As agreed upon during the 01 June 2005 TWG meeting
	<u>Insert the following as the new Sec. 5, Rule V:</u> “SEC. 5. <i>Application of Other Laws on Accountability.</i> – The	This merely recasts the previous Sec. 2(b), Rule V. This provision is necessary in view of the explicit language in Sec. 7(c),

Issue	Proposed amendment	Remarks
	application of the criteria for separation of an official or employee from the service under the Act shall be without prejudice to the application of other relevant laws on accountability of public officers and employees, such as Republic Act No. 6713 (Code of Conduct and Ethical Standards of Public Officers and Employees) and Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended.”	R.A. 9335.
17. Who exercises the power to discipline Bureau personnel?	<u>Amend Sec. 5, Rule V and re-number it to read as follows:</u> “SEC. 6. <i>Penalties Other Than Termination.</i> – The power of the Board to remove personnel pursuant to Section 7 of the Act shall be without prejudice to the power of the Commissioner to discipline Bureau personnel in accordance with the provisions of Rule IX of the Omnibus Rules Implementing Book V of Executive Order No. 292 (series of 1987), as amended, and other Civil Service laws, rules and regulations.”	This proposed amendment reflects the consensus during the 01 June 2005 TWG meeting that, except for attrition under Section 7 of R.A. 9335, the power to discipline personnel still remains with the Commissioner.
18. Who will provide secretariat support for the Board?	Amend Sec. 3, Rule VI to read as follows: “SEC. 3. <i>Secretariat Support to the</i>	USEC. Bonoan suggested that the Secretariat should have its own staff given

Issue	Proposed amendment	Remarks
	<p><i>Board.</i> – There is hereby created a Secretariat in each of the Bureaus to support the operations of their respective Boards. The budget to cover the expenses of the Boards in the performance of their functions shall be incorporated into the respective appropriations of the BIR and the BOC.”</p>	<p>the magnitude of its tasks. Existing Bureau personnel who have other responsibilities may not be able to adequately render staff support for such tasks.</p>
<p>19. How long should the Bureau come up with a system for rationally allocating revenue targets at the individual level?</p>	<p>Reduce the five (5) years given to the Bureau to only one (1) year. See Sec. 1, Rule IX.</p>	<p>As suggested by NEDA in its letter dated 23 May 2005</p>

venir99/Issues and proposed amendments to draft IRR/07June2005

DRAFT ATTRITION ACT IMPLEMENTING RULES AND REGULATIONS

MATRIX OF PROVISIONS

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p style="text-align: center;">Title: RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9335, OTHERWISE KNOWN AS THE “ATTRITION ACT OF 2005”</p> <p>Pursuant to the provisions of Section 11 of Republic Act No. 9335, “An Act to Improve the Revenue Collection Performance of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) Through the Creation of a Rewards and Incentives Fund and of a Revenue Performance Evaluation Board and For Other Purposes,” otherwise known as the "Attrition Act of 2005" (the Act), approved on January 25, 2005, and which took effect on February 11, 2005, conformably to Section 15 thereof, the Department of Finance (DOF), Department of Budget and Management (DBM), National Economic and Development Authority (NEDA), BIR, BOC, and Civil Service Commission (CSC), with the approval of the Joint Congressional Oversight Committee, hereby issue the following rules and regulations to implement the provisions of the Act.</p>	<p>➤ Sections 11, 12, and 15, Republic Act No. (R.A.) 9335</p>	

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
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<p align="center">RULE I. GENERAL PROVISIONS</p> <p>SECTION 1. <i>Title.</i> – These rules and regulations shall be referred to as the “Implementing Rules and Regulations of Republic Act No. 9335, otherwise known as the Attrition Act of 2005.”</p>		
<p>SEC. 2. <i>Interpretation.</i> – These Rules shall be interpreted in the light of the Declaration of Policy found in Section 2 of the Act:</p> <p>“It is the policy of the State to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) by providing for a system of rewards and sanctions through the creation of a Rewards and Incentives Fund and a Revenue Performance Evaluation Board in the above agencies for the purpose of encouraging their officials and employees to exceed their revenue targets.”</p>	<p>➤ Sec. 2, R.A. 9335</p>	

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
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<p>SEC. 3. <i>Coverage.</i> – These Rules shall cover all Officials and Employees in the BIR and the BOC, regardless of employment status, with at least six (6) months of service.</p>	<p>➤ Sec. 3, R.A. 9335</p>	
<p>SEC. 4. <i>Definition of Terms.</i> – For purposes of these Rules, the following definition of terms is hereby adopted:</p> <p>(a) Act – refers to Republic Act No. 9335, otherwise known as the Attrition Act of 2005.</p>		
<p>(b) Board – refers to the Revenue Performance Evaluation Board created under Section 6 of the Act.</p>	<p>➤ Sec. 6, R.A. 9335</p>	
<p>(c) Bureau – refers to either the Bureau of Internal Revenue or the Bureau of Customs, as the case may be.</p>		
<p>(d) District –</p>		<p>➤ This definition was adopted by the Technical Working Group</p>

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p>In the case of the Bureau of Internal Revenue, “District” refers to a revenue region: Provided, however, That the Large Taxpayer Service shall be deemed a District for purposes of the Act and these Rules.</p> <p>In the case of the Bureau of Customs, “District” refers to a collection district.</p>		<p>(TWG) for purposes of parity between the BIR and the BOC. It appears that the counterpart of a “collection district” in the BOC is a revenue region in the BIR. The TWG decided to flag this definition for the attention of the Congressional Oversight Committee.</p>
<p>(e) District Incentives – are the rewards given to Districts that exceed targets under circumstances described in Section 5 of the Act.</p>	<p>➤ Sec. 5, R.A. 9335</p>	
<p>(f) Employee – refers to a rank-and-file employee, regardless of employment status, who was appointed to and is occupying a first or second level position in the Bureau pursuant to Section 8(a) and (b), Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987, Executive Order No. 292, hereinafter cited as the “Administrative Code.”</p>	<p>➤ Section 8(a) and (b), Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987, Executive Order No. 292</p>	

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
(g) Fund – refers to the Rewards and Incentives Fund created under Section 4 of the Act.	➤ Sec. 4, R.A. 9335	
(h) Official – refers to an official, regardless of employment status, appointed to and occupying a third level position in the Bureau pursuant to Section 8 (c), Chapter 2, Subtitle A, Title I, Book V, Administrative Code. This term is herein used interchangeably with “Officer.”	➤ Section 8(c), Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987, Executive Order No. 292	
(i) Revenue Collection – means the total revenues collected by a Bureau as reflected in the final version of the Cash Operations Report of the Bureau of the Treasury. It shall also be adjusted to reflect the effects of changes in macroeconomic variables such as, but not limited to, the depreciation of the peso. Additional revenues collected due to a new law enacted by Congress shall not be included in the computation of a Bureau’s revenue collection if the additional revenues from such new law were not included in the original estimated revenue collection	➤ Cf. Sec. 2.2, DOF-DBM Joint Circular No. 1-95, “Implementing Rules and Regulations on the BIR Productivity Incentive Fund.”	<ul style="list-style-type: none"> ➤ The second sentence of the first paragraph is anchored on the principle that the Bureaus should neither be penalized for nor benefit from changes in revenue collection due to macroeconomic variables that are beyond their control. ➤ An example cited during the TWG discussions was when BOC exceeded its collection target not because of better

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p>expected of the Bureau for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress.</p> <p>(A) Additional revenues shall be determined by the ratio of the estimated revenues from the new law to the total estimated revenues inclusive of estimated revenues from the new law multiplied by total estimated revenues inclusive of revenues from the new law.</p> <p>(B) Revenue collection shall be computed as actual collections less additional revenues.</p> <p>Thus, additional revenues shall be computed as follows:</p>		<p>collection efforts but due to the depreciation of the peso. thereby resulting in higher peso payments for import duties.</p>

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
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<p style="text-align: center;">(A) Additional Revenue =</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; border-right: 1px solid black;"> <p style="text-align: center;">Estimated Revenue from new measure</p> <p style="text-align: center;">-----</p> <p>BESF + Estimated Revenue from new measure</p> </td> <td style="width: 5%; text-align: center; vertical-align: middle;">X</td> <td style="width: 35%; text-align: center; vertical-align: middle;">Actual collection</td> </tr> </table> <p style="text-align: center;">(B) Revenue Collection = Actual collection – Additional Revenue</p> <p>(<u>Example</u>: Revenue target = P600B; Estimated revenue collection from new law = P60B [10% of revenue target]; Bureau collection = P700B; Excess over target for purposes of the Act = P40B)</p> <table style="width: 100%; border-collapse: collapse; margin-top: 20px;"> <tr> <td style="width: 20%; vertical-align: bottom;">Total revenues collected by Bureau (P700B)</td> <td style="width: 10%; text-align: center; vertical-align: middle;">-</td> <td style="width: 30%; border-bottom: 1px solid black; vertical-align: bottom;"> <p style="text-align: center;">Estimated revenue collection from new law (P60B)</p> <p style="text-align: center;">Total estimated revenues inclusive of estimated revenues from new law (P600B)</p> </td> <td style="width: 5%; text-align: center; vertical-align: middle;">x</td> <td style="width: 35%; vertical-align: bottom;"> <p style="text-align: center;">Total estimated revenues inclusive of revenues from new law (P600B)</p> </td> </tr> </table>	<p style="text-align: center;">Estimated Revenue from new measure</p> <p style="text-align: center;">-----</p> <p>BESF + Estimated Revenue from new measure</p>	X	Actual collection	Total revenues collected by Bureau (P700B)	-	<p style="text-align: center;">Estimated revenue collection from new law (P60B)</p> <p style="text-align: center;">Total estimated revenues inclusive of estimated revenues from new law (P600B)</p>	x	<p style="text-align: center;">Total estimated revenues inclusive of revenues from new law (P600B)</p>		
<p style="text-align: center;">Estimated Revenue from new measure</p> <p style="text-align: center;">-----</p> <p>BESF + Estimated Revenue from new measure</p>	X	Actual collection								
Total revenues collected by Bureau (P700B)	-	<p style="text-align: center;">Estimated revenue collection from new law (P60B)</p> <p style="text-align: center;">Total estimated revenues inclusive of estimated revenues from new law (P600B)</p>	x	<p style="text-align: center;">Total estimated revenues inclusive of revenues from new law (P600B)</p>						

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p>(j) Support Units – are units or offices in the Bureau that provide support services to revenue collection but do not have direct revenue collection functions. Without prejudice to the creation of additional support units, or the dissolution, merger or reorganization of existing support units in the future as may be provided by law, rule or regulation, the following shall be considered Support Units for the purposes of these Rules:</p> <p><u>Bureau of Internal Revenue:</u></p> <p>A. Office of the Commissioner</p> <ol style="list-style-type: none"> 1. Policy and Planning Service and all its Divisions 2. Large Taxpayers Service and its Divisions, except LTAID I & II, LTCED, LTDO Makati & Cebu, and LTFOD. <p>B. Operations Group</p> <p>Regional Office:</p> <ol style="list-style-type: none"> 1. Staff of the Regional Director 		<p>➤ The definition of “Support Units” is necessitated by the provision in Sec 12(a)(ii) that support units shall not be entitled to unit rewards and incentives. This provision is, in turn, anchored on the assumption that support units do not have quantifiable contribution to revenue collection of the Bureau. The ability to quantify such contribution is important to determine the “relative contribution” of support units to the aggregate amount of excess collection for purposes of computing rewards. However, the same principle applies to support personnel but the latter will be given rewards and incentives, which, though not equal to those to be given to personnel with individual collection targets, is similarly</p>

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p>2. All Divisions of the Regional Office</p> <p>3. Staff of the Revenue District Office</p> <p>4. All sections without Audit and/or Collection functions</p> <p>C. Legal & Inspection Group and all its Services and Divisions</p> <p>D. Resource Management Group and all its Services and Divisions, and</p> <p>E. Information Systems Group and all its Services and Divisions.</p> <p><u>Bureau of Customs</u></p> <p>A. Office of the Commissioner</p> <p>B. Internal Administration Group</p> <p>C. Intelligence and Enforcement Group</p> <p>D. Revenue Collection and Monitoring</p>		<p>based on their performance pursuant to Sec. 12(b)(ii). Hence, by parity of reasoning, support units should also be given rewards and incentives based on their performance, although, again, not in the same magnitude as those to be given to units with collection targets. Performance evaluation of units (whether office, service, or district) is possible under a Performance Management System adverted to in Sec. 12(b)(ii). If it is decided that support units should be rewarded for good performance, then there may be no need to define the term “Support Units” in the IRR.</p>

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<p>Group</p> <p>E. Assessment and Operation Coordinating Group</p> <p>F. Management Information System and Technology Group</p>		
<p>(k) Unit – For purposes of determining rewards and incentives under Section 4 of the Act, a Unit may refer to a Service, Revenue Region, District, Division, and Section, in the case of the BIR, and to a Collection District, Port, and Sub-Port, in the case of the BOC.</p>	<p>➤ Paragraph 4, Sec. 4, R.A. 9335</p>	<p>➤ Since it is not defined in the law, defining the term “Unit” is necessary to determine among which offices and down to what level the incentives under the Attrition Act will be apportioned. As this goes to the intent of the legislature, it may be helpful to flag this issue for the attention of the Congressional Oversight Committee.</p>

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<p style="text-align: center;">RULE II. ALLOCATION OF REVENUE TARGETS</p> <p>SEC. 5. Revenue Targets. – Pursuant to Section 4 of the Act, revenue targets shall be based on the original estimated revenue collection expected of the BIR and the BOC for a given fiscal year as approved by the Development Budget Coordination Committee (DBCC) and stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress. The determination of whether or not a Bureau has exceeded its revenue target shall be made through a comparison of such Bureau’s revenue collection with its revenue targets. DBCC shall formally communicate the revenue targets to the Board in the BIR and the BOC and these targets shall serve as the basis for implementing the Act: <i>Provided</i>, That, revenue targets shall exclude estimated yields from new revenue measures which, although included in the BESF, were not enacted into law: <i>Provided, further</i>, That estimated yields from new revenue measures that were enacted and implemented later than the original target dates in the BESF shall be pro-</p>	<ul style="list-style-type: none"> ➤ Paragraph 3, Sec. 4, R.A. 9335 ➤ Cf. Sec. 2.1, DOF-DBM Joint Circular No. 1-95 	<ul style="list-style-type: none"> ➤ The last proviso of this section seeks to address the situation where the BESF includes the estimated annual yield of a new revenue measure that was subsequently enacted later than originally envisioned in the BESF. If this happens, the estimated yield from the new law will be pro-rated under this proviso. ➤ Example: When the BESF was submitted to Congress, it included the estimated yield of a new VAT measure to be proposed to Congress. However, due to certain delays in the implementation of the new VAT law (including, for example, the suspension of its implementation due to a preliminary injunction issued by the Supreme Court), it was only
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<p>rated accordingly.</p>		<p>implemented during the last quarter of the fiscal year. Under this proviso, the estimated yield from the new VAT law shall be pro-rated. Thus, the revenue target from the new measure shall be deemed reduced to one-fourth of the original target.</p>
<p>SEC. 6. <i>Allocation of Revenue Targets.</i> – Each Bureau shall establish a system for rationally allocating revenue targets among its Districts, Officials and Employees.</p>		
<p>(a) Revenue target setting for specific Districts shall consider, among others, their historical record of revenue collection: <i>Provided</i>, however, That target setting shall likewise consider fluctuations in prior years’ collections due to non-recurring transactions. Non-recurring transactions shall refer to one-time transactions which are substantial in amount (i.e., the amount accounts for ten percent [10%] or more of a District’s collections for a particular month),</p>		<p>➤ An example cited for non-recurring transactions that shall be taken into consideration in target setting for a specific District is when a billionaire from said District dies. Due to the magnitude of the taxes to be paid by the estate of said billionaire (supposing no</p>

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<p>including the following: (i) capital gains taxes from the sale of real property or shares of stocks (on a per transaction basis), (ii) documentary stamp taxes, (iii) estate and donor's taxes, and (iv) special projects (e.g., the Bureau of Internal Revenue's voluntary assessment program). Transfer of taxpayers from one District to another, when such taxpayers account for at least five percent (5%) of such District's collections for the previous year, shall be taken into consideration in the allocation of targets among Districts.</p>		<p>massive estate planning was involved), the District's collections for the year increased dramatically. However, since it is not every year that a billionaire from the District dies, such increased collections shall be deemed as a non-recurring transaction and will not necessarily affect target setting for said District.</p>
<p>(b) Similarly, target setting for individual Officials and Employees shall consider, among others, their historical record of revenue collection or that of the previous incumbent of the position in the case of new appointees or newly-assigned Officials and Employees. The system for allocating revenue targets at the level of Officials and Employees shall strive towards the ability to ascribe changes in taxpayer behavior to specific actions of Bureau Officials and Employees. Such system shall therefore evolve from, and be based on, a better understanding of taxpayer behavior that enables the Bureau to predict and assess</p>		

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<p>such behavior to a reasonable extent. Predictability of taxpayer behavior is necessary if the allocation of revenue targets among Bureau Officials and Employees is to have reasonable basis.</p>		
<p><i>SEC. 7. Reporting of Revenue Targets Distribution.</i> – The distribution of revenue targets shall be reported according to the following rules:</p> <p>(a) Pursuant to Section 4 of the Act, the BIR and the BOC shall submit to the DBCC the distribution of the agencies’ revenue targets as allocated among its revenue Districts in the case of the BIR, and the collection Districts in the case of the BOC.</p>	<p>➤ Paragraph 3, Sec. 4, R.A. 9335</p>	
<p>(b) For purposes of determining accomplishment of individual revenue collection targets, the BIR and the BOC shall likewise submit to their respective Boards the distribution of revenue targets as allocated among Officials and Employees who have revenue collection functions and as reflected in their individual performance contracts.</p>		

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<p>RULE III. REWARDS AND INCENTIVES FUND</p> <p>SEC. 8. <i>Creation and Source.</i> – The Rewards and Incentives Fund, created under Section 4 of the Act, shall be sourced from the collection of the BIR and the BOC in excess of their respective revenue targets of the year, as determined by the DBCC. The Fund shall be calculated according to the following percentages:</p>	<p>➤ Sec. 4, R.A. 9335</p>							
<table border="1"> <thead> <tr> <th data-bbox="170 846 550 959"><u>Excess of Collection Over the Revenue Targets</u></th> <th data-bbox="550 846 953 959"><u>Percent (%) of the Excess Collection to Accrue to the Fund</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="170 959 550 1045">30% or below</td> <td data-bbox="550 959 953 1045">15%</td> </tr> <tr> <td data-bbox="170 1045 550 1159">More than 30%</td> <td data-bbox="550 1045 953 1159">15% of the first 30% plus 20% of the remaining excess.</td> </tr> </tbody> </table>			<u>Excess of Collection Over the Revenue Targets</u>	<u>Percent (%) of the Excess Collection to Accrue to the Fund</u>	30% or below	15%	More than 30%	15% of the first 30% plus 20% of the remaining excess.
<u>Excess of Collection Over the Revenue Targets</u>			<u>Percent (%) of the Excess Collection to Accrue to the Fund</u>					
30% or below			15%					
More than 30%	15% of the first 30% plus 20% of the remaining excess.							
30% or below	15%							
More than 30%	15% of the first 30% plus 20% of the remaining excess.							
<p>SEC. 9. <i>Automatic Appropriation of the Fund.</i> – Pursuant to Section 4 of the Act, the Fund shall be</p>	<p>➤ Paragraph 2, Sec. 4, R.A. 9335</p>							

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<p>deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.</p>		
<p>SEC. 10. <i>Allocation, Distribution and Release of the Fund.</i> – The Fund shall be allocated, distributed and released by the Board in each agency, in accordance with these Rules and the rules and regulations issued by the Board.</p>	<p>➤ Paragraph 4, Sec. 4, R.A. 9335</p>	
<p>SEC. 11. <i>Submission of Expenditure Plans.</i> – At the beginning of the fiscal year, each Bureau shall submit to its Board an expenditure plan that shall govern the utilization of the Fund in the event the Bureau exceeds its target.</p>		
<p>SEC. 12. <i>Distribution of Rewards and Incentives.</i> – Rewards and incentives from the Fund shall be apportioned among the various Units, Officials and Employees of the BIR or the BOC, as the case may be, in proportion to their relative contribution to the</p>	<p>➤ Paragraph 3, Sec. 4, R.A. 9335</p>	

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<p>aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by the two bureaus, respectively. The Commissioner shall submit for the approval of the Board the proposed distribution of rewards and incentives from the Fund in accordance with the following framework and such other rules and regulations as may be issued by the Board:</p>		
<p>(a) Unit rewards and incentives –</p> <p>(i) Unit rewards and incentives shall be determined based on a particular Unit’s relative contribution to the aggregate amount of excess revenue collection of the Bureau: <i>Provided, however, That a Unit shall not be entitled to rewards and incentives even if the Bureau as a whole meets its revenue target if such Unit fails to meet its own revenue collection target. For the purposes of these Rules, a Unit’s</i></p>	<p>➤ Paragraph 4, Sec. 4, R.A. 9335</p>	<p>➤ When a Unit fails to meet its own collection target, it does not contribute to the “aggregate amount of excess revenue collection of the Bureau.” Hence, such Unit is not entitled to rewards and incentives.</p>

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<p>relative contribution to the aggregate amount of the Bureau's excess shall be a function of the percentage of such Unit's excess collection over its target.</p> <p>(ii) Support Units shall not be entitled to unit rewards and incentives.</p>		
<p>(b) Individual rewards and incentives –</p> <p>(i) Individual rewards and incentives shall be calculated in accordance with an Official's or Employee's relative contribution to the aggregate amount of excess revenue collection of the Bureau: <i>Provided</i>, That such relative contribution shall be reflected in each Official's or Employee's performance evaluation rating, which rating, in the case of Officials and Employees who have</p>		<p>➤ The TWG discussed the suggestion that rewards sharing between revenue-collecting personnel and support personnel should be pegged at 70%-30%, in favor of the former. This proposal aims to avoid the possibility of disagreements over the sharing scheme unless provided for in the IRR. However, fixing the sharing scheme at fixed percentages similar to the one being proposed could result in an</p>

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<p>revenue collection functions, shall take account of the performance rating of their respective units: <i>Provided, further,</i> That higher rewards and incentives shall accrue to Officials and Employees who exercise greater responsibilities; hence, those who occupy higher ranks shall correspondingly be entitled to greater rewards and incentives: <i>Provided, furthermore,</i> That individuals holding positions subject to attrition as provided for in Section 17, Rule V of these Rules shall be entitled to an additional premium in view of the risk of attrition inherent in such positions: <i>Provided, finally,</i> That an Official or Employee who is transferred in the middle of the period shall be entitled to a pro-rata share in the rewards.</p> <p>(ii) For purposes of rewards and</p>		<p>unintended iniquitous result if the number of support personnel in a unit turns out to be less than the number of revenue-collecting personnel (e.g., one support personnel entitled to 30% will receive bigger rewards than, say, 7 revenue-collecting personnel who will left with 70% to divide among themselves). Thus, if the intention is to give revenue-collecting personnel greater share in the rewards, the sharing scheme provision should provide that revenue-collecting personnel shall receive twice (or thrice or whatever sharing scheme is finally decided upon) that of support personnel. The language of the third proviso of Section 12(b)(ii) allows the Commissioner to propose such sharing scheme to the Board.</p>

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<p>incentives for Officials and Employees who provide support services to revenue collection but do not have direct revenue collection functions, the same shall be determined through the Performance Management System to be adopted by the Board for a particular Bureau in accordance with the provisions of Section 7 of the Act. This provision shall apply equally to Officials and Employees in Support Units as well as to those providing support services in Districts.</p>		
<p>RULE IV. DISTRICT INCENTIVES</p> <p>SEC. 13. <i>Creation and Source of District Incentive.</i> – (a) In the event that the BIR or the BOC fails to meet its revenue target by less than ten percent (10%), Districts, which exceed their respective allocations of the revenue target (allocated target), shall be entitled to rewards and incentives (District Incentive)</p>	<p>➤ Sec. 5, R.A. 9335</p>	<p>➤ The TWG discussions on District Incentives centered on whether or not the same could be distributed among personnel in the districts that exceeded their targets. Unlike Section 4 of the law that identifies who shall share in the rewards—</p>

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<p>amounting to ten percent (10%) of the excess over its allocated target: <i>Provided, however,</i> That any BIR revenue District or BOC collection office which deliberately foregoes any revenue collection in any given year as part of a scheme to avoid a higher allocated target for the subsequent year shall not be entitled to a District Incentive in such subsequent year notwithstanding its having exceeded its allocated target: <i>Provided, further,</i> That the allocated target of any such District shall have been reported to and validated by the DBCC as required in Section 4 of the Act.</p>		<p>namely, units, officials and employees—Section 5 only states that it is the district that exceeds its target that is entitled to the District Incentive. The collective sentiment of the TWG is to allow personnel of a district to share in the District Incentive similar to the principle behind Section 4 of the Act. As this goes to the intention of the law, the TWG agreed to bring this to the attention of the Congressional Oversight Committee.</p>
<p>(b) A District shall be deemed to have deliberately foregone revenue collection when, after it has reached or exceeded its annual target before the end of the year, its collection for the remaining period decreases significantly as compared to its collection for the same period in the previous year: <i>Provided,</i> That the remaining period shall at least be one (1) month. A decrease in collection of at least twenty percent (20%)</p>	<p>➤ First proviso, Sec. 5, R.A. 9335</p>	<p>➤ This provision defines the term “deliberately foregoes” in Sec. 5 of the Act. It also incidentally addresses the disincentive for districts to collect more that Sec. 5 of the Act engenders.</p>

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<p>shall be deemed significant unless extenuating circumstances similar to those enumerated in Section 18, Rule V are determined by the Board to be present.</p>		
<p>SEC. 14. <i>Automatic Appropriation of District Incentive.</i> – The district reward shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released in the same fiscal year. For this purpose, the proposed annual budgets of the BIR and the BOC shall respectively incorporate an item that allocates an amount to cover the District Incentive taking into account the performance of the districts, among others: <i>Provided,</i> That in the event the actual District Incentive exceeds the amount appropriated for said purpose in the budget, the difference shall be added to the proposed allocation for the District Incentive in the succeeding year’s budget of the Bureau.</p>	<p>➤ Paragraph 2, Sec. 5, R.A. 9335</p>	<p>➤ Unlike the Rewards and Incentives Fund under Section 4 of the Act, which is sourced from the excess collection of the Bureau, the Act does not provide for the source of the District Incentives. Thus, the second sentence of this provision addresses the question of where the District Incentive will be sourced considering that the Bureau as a whole has not exceeded its target.</p>
<p>SEC. 15. <i>Allocation, Distribution and Release of District Incentive.</i> – The allocation, distribution and release of the district reward shall likewise be prescribed by the rules and regulations of the Board.</p>	<p>➤ Paragraph 3, Sec. 5, R.A. 9335</p>	

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<p>SEC. 16. <i>Submission of Expenditure Plans.</i> – At the beginning of the fiscal year, each District shall submit to the Commissioner an expenditure plan that shall govern the utilization of the District Incentive in the event the District becomes entitled to said incentive.</p>		
<p style="text-align: center;">RULE V. ATTRITION AND OTHER PENALTIES</p> <p>SEC. 17. <i>Personnel Subject to Attrition.</i> – For purposes of paragraph (b), Section 7 of the Act, personnel subject to attrition shall be Officials and Employees, including District heads and assistant heads, who have revenue collection targets as reflected in the performance contracts that they shall enter into pursuant to Section 7(b) of the Act and Civil Service laws, rules, and regulations. In the case of the BIR, they shall also include revenue district officers and their assistants, supervisors and revenue officers who are assigned individual collection targets. In the case of the BOC, they shall include district/port collectors and their deputies, as well as customs officers</p>	<ul style="list-style-type: none"> ➤ Sec. 7(b), R.A. 9335 ➤ Cf. Sec. 33, Chapter 5, Subtitle A, Title I, Book V, Administrative Code of 1987 	<ul style="list-style-type: none"> ➤ This provision enumerates the Officials and Employees of the BIR and the BOC who will be subject to attrition. ➤ The issue of performance contracts was raised during the TWG deliberations. The CSC representative pointed out that performance contracts are required under existing Civil Service rules and regulations on performance evaluation of government personnel. This is reiterated in the Act when it authorized the Board to adopt a system for evaluating

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<p>assigned in services, divisions or units with collection targets and directly performing assessment and collection functions. The Commissioner shall submit to the Board, not later than the end of the first quarter of the fiscal year, a list of Bureau personnel subject to attrition.</p>		<p>performance in the BIR and the BOC under Sec. 7(d).</p> <ul style="list-style-type: none"> ➤ The TWG representatives from the BOC and BIR provided the enumeration of their respective personnel subject to attrition. Initially, the BIR came up with a list of specific officials and employees (e.g., Commissioner of Internal Revenue, Head of the Large Taxpayers Service, etc.) subject to attrition.
<p>SEC. 18. <i>Ground for Termination.</i> – An Official or Employee of the Bureau may be separated or removed from the service by the final decision of the Board, upon the recommendation of the Commissioner, when the revenue collection performance of such Official or Employee falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection as provided in these Rules, subject to civil service laws, rules and regulations and compliance with substantive and procedural due process: <i>Provided, however,</i> That</p>	<ul style="list-style-type: none"> ➤ Sec. 7(b), R.A. 9335 ➤ Sec. 7(c), R.A. 9335 	<ul style="list-style-type: none"> ➤ The inclusion of payments through tax credit certificates (TCCs) in the determination of an Official’s or Employee’s revenue collection performance is only for purposes of attrition. Payments using TCCs are not included in the determination of revenue collection performance for purposes of computing the rewards.

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<p>final decisions of the Board in this instance shall be immediately executory: <i>Provided, further,</i> That the determination of the revenue collection performance of an Official or Employee shall include payments using tax credit certificates (TCCs): <i>Provided, furthermore,</i> That the following exemptions shall apply:</p>		
<p>(a) Where the District or area of responsibility is newly-created, not exceeding two years in operation, and has no historical record of collection performance that can be used as basis for evaluation. A District or area of responsibility shall be deemed newly-created when it is established where no District or area of responsibility previously existed, or is carved out of the jurisdiction of an existing District or Districts or of an area or areas of responsibility, or is the result of the merger of two (2) or more Districts or areas of responsibility; and</p>	<ul style="list-style-type: none"> ➤ Sec. 7(b)(1), R.A. 9335 ➤ Cf. Sec. 9 of the National Internal Revenue Code (NIRC) and Sec. 701 of the Tariff and Customs Code of the Philippines (TCCP) 	
<p>(b) Where the Official or Employee is a recent transferee in the middle of the period under consideration unless the transfer was due to</p>	<ul style="list-style-type: none"> ➤ Sec. 7(b)(2), R.A. 9335 ➤ Secs. 16 and 17, NIRC ➤ Sec. 703, TCCP 	

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<p>nonperformance of revenue targets or potential nonperformance of revenue targets: <i>Provided, however,</i> That when the District or area of responsibility covered by Officials or Employees has suffered from economic difficulties brought about by natural calamities or <i>force majeure</i> or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.</p> <p>The performance of Officials and Employees who are transferred due to nonperformance of revenue targets or potential nonperformance of revenue targets shall be evaluated using their performance in their current and previous assignments on a pro-rata basis: <i>Provided,</i> that the power to transfer personnel due to nonperformance of revenue targets or potential nonperformance of revenue targets as embodied in Section 7(b)(2) of the Act shall be without prejudice to the power of the Commissioner of Internal Revenue to assign or reassign internal revenue Officers and Employees under Sections 16 and 17 of the National Internal Revenue Code or to the power of the Commissioner of Customs to assign Employees under Section 703 of the Tariff and Customs Code of the</p>		
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Philippines, in the best interest of the service and as often as the exigencies of the service may require.		
SEC. 19. <i>Relevant Factors Affecting Collection.</i> – For purposes of Section 7(a) of the Act and Section 18 of this Rule, the Board shall consider the following, among others, as relevant factors affecting the level of collection: <i>Provided</i> , That these factors were not taken into account in setting BESF targets:	➤ Sec. 7(b), R.A. 9335	➤ This provision enumerates the “relevant factors affecting the level of collection” mentioned in Sec. 7(b), R.A. 9335.
(a) Enactment of a law that repeals revenue measures, reduces tax and tariff rates, grants tax exemptions, or otherwise results in the diminution of the tax base or of taxable transactions and activities, including the entry into force of a treaty or an international agreement that the Philippines entered into resulting in preferential treatment for certain taxpayers or transactions: <i>Provided</i> , That the Board shall have the final authority to determine the affected District or Districts as well as the amount of revenues deemed foregone due to such enactment or entry into force;		

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(b) Reduction by the President of tariff rates under Section 401 of the Tariff and Customs Code of the Philippines; and	Sec. 410, TCCP	
(c) Exercise by the President of the power to open or close any port of entry under Section 702 of the Tariff and Customs Code of the Philippines.	Sec. 702, TCCP	
SEC. 20. <i>Right to Appeal.</i> -- An Employee whose employment is terminated by virtue of the decision of the Board pursuant to paragraphs (b) and (c), Section 7 of the Act and to Section 18, Rule V of these Rules may appeal to the Civil Service Commission (CSC) proper while an Official may appeal such decision to the Office of the President within fifteen (15) days from receipt of the denial of the Motion for Reconsideration of the Board's decision.	<ul style="list-style-type: none"> ➤ Sec. 9, R.A. 9335 ➤ Sec. 49, CSC Resolution No. 94-0521 ➤ Sec. 12(11), Chapter 3, Subtitle A, Title I, Administrative Code of 1987 ➤ Cf. Secs. 48 and 49, Chapter 6, Subtitle A, Title I, Book V, Administrative Code of 1987 	
SEC. 21. <i>Non-Disciplinary Nature of Removal.</i> – Employees and Officials of the Bureau who are removed from the service by virtue of Section 7(a) of the Act shall be deemed dropped from the rolls in		<ul style="list-style-type: none"> ➤ Dropping from the rolls is a non-disciplinary means of removing personnel in the Civil Service. A person removed

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<p>accordance with Civil Service laws, rules, and regulations.</p>		<p>through this means is still entitled to separation benefits and privileges.</p>
<p><i>SEC. 22. Application of Other Laws on Accountability.</i> – The application of the criteria for separation of an Official or Employee from the service under the Act shall be without prejudice to the application of other relevant laws on accountability of public Officers and Employees, such as Republic Act No. 6713 (Code of Conduct and Ethical Standards of Public Officers and Employees) and Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended.</p>	<p>➤ Sec. 7(c), R.A. 9335</p>	<p>➤ Except for attrition under Section 7 of the Act, the power to discipline personnel under existing laws on accountability of public officials and employees still remains with the Commissioner.</p>
<p><i>SEC. 23. Penalties Other Than Termination.</i> – The power of the Board to remove personnel pursuant to Section 7 of the Act shall be without prejudice to the power of the Commissioner to discipline Bureau personnel in accordance with the provisions of Rule IX of the Omnibus Rules Implementing Book V of Executive Order No. 292 (series of 1987), as amended, and other Civil Service laws, rules and regulations.</p>	<p>➤ Rule IX, Omnibus Rules Implementing Book V of the Administrative Code of 1987, as amended</p>	

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<p style="text-align: center;">RULE VI. REVENUE PERFORMANCE EVALUATION BOARD</p> <p>SEC. 24. <i>Composition.</i> – Pursuant to Section 6 of the Act, the BIR and the BOC shall each have a Revenue Performance Evaluation Board, which shall be composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary as the Chairman; the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary; the Director General of the National Economic and Development Authority (NEDA) or his/her Deputy Director General; and as nonvoting members the Commissioners of the BIR and the BOC, or their Deputy Commissioners; two representatives from the rank-and-file Employees; and a representative from the Officials, both of whom shall be duly nominated by their respective recognized organization.</p>	<ul style="list-style-type: none"> ➤ Sec. 6, R.A. 9335 	
<p>SEC. 25. <i>Powers and Functions.</i> -- The Board in the agency shall have the following powers and functions:</p>	<ul style="list-style-type: none"> ➤ Sec. 7 (a), R.A. 9335 ➤ Cf. Sec. 56, Chapter 7, Subtitle A, Title I, Book V, 	<ul style="list-style-type: none"> ➤ This provision enumerates the forms of “nonmonetary benefits” that may be given as

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p>(a) To prescribe the rules and guidelines for the allocation, distribution and release of the Fund due to the Bureau as provided for in Section 4 of the Act and for the allocation, distribution and release of the District Incentive due to a District as provided for in Section 5 of the Act: <i>Provided</i>, That the rewards under the Act may also take the form of nonmonetary benefits such as, but not limited to, official recognition in the form of plaques, citations, and commendations; added perks and privileges in the form of paid memberships in sports and recreation clubs, special parking spaces, and access to executive lounges; and additional benefits in the form of paid vacation, travel, and foreign training: <i>Provided, further</i>, That Unit rewards and incentives shall not be distributed as additional salaries or added remuneration for such Unit’s Officials and Employees;</p>	<p>Administrative Code of 1987</p>	<p>rewards.</p>
<p>(b) To set the criteria and procedures for removing from the service Officials and Employees whose revenue collection falls short of the target in accordance with Section 7 of the Act;</p>	<p>➤ Sec. 7(b), R.A. 9335</p>	

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
(c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph;	➤ Sec. 7(c), R.A. 9335	
(d) To prescribe a system for performance evaluation that shall be administered in such manner as to continually foster the improvement of individual efficiency and organizational effectiveness through the use of performance measures that include, but are not limited to, the following indicators: financial target, taxpayer compliance and satisfaction, process improvement, and organizational wellness;	➤ Sec. 7(d), R.A. 9335	
(e) To perform such other functions as are necessary or incidental to its mandated functions, including the issuance of rules and regulations for the proper conduct of its functions; and	➤ Sec. 7(e), R.A. 9335	
(f) To submit an annual report to the Congress.	➤ Sec. 7(f), R.A. 9335	
SEC. 26. <i>Secretariat Support to and Budget of the</i>		➤ Since the Act is silent on

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p><i>Board.</i> – There is hereby created a Secretariat to support the operations of the Boards. The budget to cover the expenses of the Boards and the Secretariat shall be included in the annual appropriations of the DOF. The Boards and the Secretariat shall be under the DOF for purposes of administrative supervision.</p>		<p>secretariat support for the Board, this section provides for the creation and budget of such secretariat.</p> <p>➤ The BIR and the BOC Boards have practically the same composition (except for the non-voting members). Thus, both Boards may have a single secretariat for purposes of economy.</p>

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
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<p style="text-align: center;">RULE VII. LIABILITY OF OFFICIALS, EXAMINERS AND EMPLOYEES OF THE BIR AND BOC</p> <p>SEC. 27. The officials, examiners, and employees of the Bureau of Internal Revenue and the Bureau of Customs who violate the Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.</p>	<p>➤ Sec. 8, R.A. 9335</p>	
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PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p align="center">RULE VIII. PERFORMANCE REPORT</p> <p>SEC. 28. <i>Report on Bureau Performance.</i> -- The Commissioners of the BIR and the BOC shall regularly file a report with the Board stating therein the status of collection in their respective agencies, and in the event of shortfall or surplus, the source of the shortfall or surplus, the personnel in-charge of the Unit, his/her explanation for the shortfall or surplus and his/her recommendation as to the remedial course of action in cases of shortfall, and in the case of the year-end report the names of Officers and Employees who are recommended for termination or reward.</p> <p>The report shall be submitted semi-annually with the last report to be annualized. A copy of the report shall be submitted to Congress within two months after the period ends.</p>	<p>➤ Sec. 10, R.A. 9335</p>	
<p>SEC. 29. <i>Report on Commissioner's Performance.</i> – In the event of a shortfall in the national target, a separate report shall be submitted by the voting members of the Board to the Office of the President</p>	<p>➤ Paragraph 3, Section 10, R.A. 9335</p>	

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
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<p>containing its evaluation of the performance of the Commissioner concerned on the basis of which the President may pursue a course of action consistent with the national interest. Said reports shall likewise be furnished to Congress.</p>		
<p style="text-align: center;">RULE IX. FINAL PROVISIONS</p> <p>SEC. 30. <i>Transitory Provisions.</i> – For purposes of attrition under Section 18, Rule V of these Rules, the basis for evaluating the performance of revenue-collecting personnel shall be the individual performance contracts that they shall enter into pursuant to Section 7(b) of the Act and Civil Service laws, rules, and regulations, pending the adoption of a system that rationally allocates revenue targets at the level of Officials and Employees as provided for in Section 6(b), Rule II of these Rules: <i>Provided, however,</i> That within one (1) year from the effectivity of these Rules, the Board shall, upon the recommendation of the Commissioner, adopt a system for rationally allocating revenue targets at the level of individual personnel.</p>		<p>➤ A central issue that remains unresolved is whether or not the Attrition Act could be implemented for fiscal year 2005 considering that a system that rationally allocates revenue collection targets was not yet in place when the targets were distributed at the individual level. The TWG agreed to flag this issue for the attention of the Congressional Oversight Committee.</p>

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
<p>SEC. 31. <i>Separability Clause.</i> – Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or legality of the other provisions.</p>	<p>➤ Cf. Sec. 13, R.A. 9335</p>	
<p>SEC. 32. <i>Repealing Clause.</i> – Pursuant to Section 14 of the Act, all laws, presidential decrees, executive orders, other executive issuances, rules and regulations or parts thereof, including the provisions of Section 285 of Republic Act No. 8424, which are inconsistent with the Act are thereby repealed, amended or modified accordingly.</p>	<p>➤ Sec. 14, R.A. 9335</p>	
<p>SEC. 33. <i>Effectivity.</i> -- These Rules shall take effect on the fifteenth (15th) day from the date of their publication in the Official Gazette or in at least two (2) newspapers of general circulation.</p>	<p>➤ Cf. Secs. 3 and 4, Chapter 2, Book VII, Administrative Code of 1987</p>	<p>➤ Considering that the Act is not self-executory in that it explicitly requires the issuance of rules and regulations for its proper implementation (Sec. 11, R.A. 9335), an important issue remains: Should the law be deemed effective for purposes of implementation upon the effectivity of the law itself (that is, on 11 February 2005) or upon the effectivity of its IRR?</p>

PROVISION	LEGAL SOURCE/BASIS	COMMENT/EXPLANATION
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Salient features of the Attrition Act

(Written as Appendix 1 of Chapter 1 of the BIR Large Taxpayer Service Performance Management System Guidebook)

Historical Background

Republic Act No. 9335,¹ also known as the "Attrition Act of 2005," was passed by the Thirteenth Congress of the Philippines on 19 January 2005 and approved by the President on 25 January 2005. A consolidation of House Bill No. 2996 and Senate Bill No. 1871, it was certified by the President as an urgent measure to help improve the fiscal position of the government.

Rationale for the Attrition Act of 2005

As the two main revenue-generating agencies of the government, the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) collectively account for more than eighty percent (80%) of the country's total revenues.² Admitting the need to address the country's fiscal problems, Congress responded to the request of the Executive Department for the enactment of a law that seeks to improve the revenue collection performance of the BIR and BOC.³ Together with the excise tax and expanded value-added tax laws,⁴ the Attrition Act of 2005 is expected to help ease the country's fiscal difficulties.

¹An Act to Improve the Revenue Collection Performance of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) Through the Creation of a Rewards and Incentives Fund and of a Revenue Performance Evaluation Board and For Other Purposes"

²See, for instance, the figures on the country's revenue performance as of January 2005 at <http://www.dof.gov.ph/stat/revperformance05.pdf>.

³In the Eleventh Congress, a measure similar to the Attrition Act of 2005 was filed. It was passed by Congress but was vetoed by President Macapagal-Arroyo in February 2001 on due process grounds. Said due process objections are addressed in the Attrition Act of 2005, particularly in Section 7(b) and Section 9 thereof.

⁴Republic Act No. 9334, "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended," approved on 21 December 2004 and Republic Act No. 9337, "An Act Amending Section 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes," approved on 24 May 2005. The Supreme Court in its decision in G.R. No. 168056 and its accompanying cases on 01 September 2005 upheld the validity of R.A. 9337.

A. Status of the Attrition Act of 2005

Having been published in at least two newspapers of general circulation last 27 January 2005, the Attrition Act of 2005 became effective pursuant to its Section 15. However, its implementing rules and regulations (IRR) are not yet effective as of this writing. The Attrition Act of 2005 is not a self-executory law in that it explicitly requires the issuance of the IRR to provide the details for its proper implementation.⁵ Also, deliberations in Congress, and even the text of the law itself,⁶ indicate that the details of implementation will be provided by the IRR. Its implementation will therefore depend on the effectivity of such IRR.⁷

B. Correlation with the Performance Management System

a. Civil Service laws, rules, and regulations

In itself, the Performance Management System (PMS), as a tool for evaluating the performance of BIR personnel, has legal basis under Section 33, Chapter 1, Subtitle A, Title I, Book V, Executive Order No. 292 (1987), otherwise known as the "Administrative Code of 1987."⁸

b. Republic Act No. 9335 and its IRR

⁵Section 11, Attrition Act of 2005

⁶Section 7(b), *Id.*

⁷Department of Finance Assistant Secretary Gil Beltran was quoted as saying that the Attrition Act of 2005 will take effect in 2006. See the story at http://money.inq7.net/topstories/view_topstories.php?yyyy=2005&mon=09&dd=05&file=2.

⁸Section 33. Performance Evaluation System. - There shall be established a performance evaluation system, which shall be administered in accordance with rules, regulations and standards promulgated by the [Civil Service] Commission for all officers and employees in the career service. Such performance evaluation system shall be administered in such manner as to continually foster the improvement of individual employee efficiency and organizational effectiveness.

"Each department or agency, may, after consultation with the Commission, establish and use one or more performance evaluation plans appropriate to the various groups of positions in the department or agency concerned. No performance evaluation shall be given, or used as a basis for personnel action, except under an approved performance evaluation plan: *Provided*, That each employees shall be informed periodically by his supervisor of his performance evaluation."

Moreover, Section 7(d) of the Attrition Act of 2005 empowers the Revenue Performance Evaluation Board (the Board) "to prescribe a system for performance evaluation." This provision of the law is amplified in the IRR, which provides that the system for performance evaluation to be adopted by the Board "shall be administered in such manner as to continually foster the improvement of individual efficiency and organizational effectiveness through the use of performance measures that include, but are not limited to, the following indicators: *financial target, taxpayer compliance and satisfaction, process improvement, and organizational wellness.*"⁹

Salient features of the Attrition Act of 2005 and its IRR

A. Target setting

Revenue target setting is one of the most important features of the Attrition Act of 2005. In setting the revenue target for the BIR, it is essential that the same should be reasonable and reflective of both the capacity of the taxpaying public to pay as well as the obligation of the revenue agency to collect the correct amount of taxes. Thus, revenue targets should not be too low as to make the same easily achievable thereby defeating the very purpose of the Attrition Act of 2005, which is to improve revenue collection performance considering the government's current fiscal difficulties. On the other hand, revenue targets should also not be set too high as to make the same virtually unattainable thereby making the rewards provisions of the Attrition Act of 2005 for naught.

B. Bureau

"Revenue targets," according to the Attrition Act of 2005, "shall refer to the original estimated revenue collection expected of the BIR x x x for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President

⁹Section 25(d), Rule VI of the Attrition Act of 2005 IRR. Emphasis supplied.

to Congress.”¹⁰ To determine performance at the end of the fiscal year, the BIR is required to submit to the Development Budget Coordinating Committee (DBCC) the distribution of its revenue targets among revenue districts. To be fair, revenue targets shall not include estimated yields from new revenue measures which, although included in the BESF, were not enacted into law.¹¹

Revenue targets that include yields from new revenue measures that were enacted and implemented later than the original target dates in the BESF will be accordingly reduced.¹² More specifically, the estimated yields from the new revenue measures will be reduced proportionately. For example, when the BESF submitted to Congress includes the estimated yield of an expanded VAT measure, which gets implemented only during the last quarter of the fiscal year due to certain delays (including, for instance, the suspension of its implementation due to a preliminary injunction issued by the Supreme Court), the estimated yield will be proportionately reduced to one-fourth of its original amount.

The IRR requires the BIR to establish a system for rationally allocating revenue targets among its districts, officials and employees.¹³

a. Unit

At the District level, revenue target setting will be based on historical record of revenue collection, among others. However, it will also consider fluctuations in prior years’ collections due to non-recurring transactions. The IRR defines “*non-recurring transactions*” as those referring to “one-time transactions which are substantial in amount (i.e., the amount accounts for ten percent [10%] or

¹⁰Paragraph 3, Section 4, Attrition Act of 2005

¹¹Section 5, Rule II, Attrition Act of 2005 IRR

¹²*Id.*

¹³Section 6, Rule II, *Id.*

more of a District's collections for a particular month), including the following: (i) capital gains taxes from the sale of real property or shares of stocks (on a per transaction basis), (ii) documentary stamp taxes, (iii) estate and donor's taxes, and (iv) special projects (e.g., the BIR's voluntary assessment program)."¹⁴

Transfers of taxpayers from one district to another will also be considered in target setting among districts. However, to impact on target setting, the transferring taxpayers must account for at least five percent (5%) of a district's collections for the previous year.¹⁵

b. Individual

At the individual level, target setting will also be based on historical record of revenue collection, among others. In the case of a new appointee or newly assigned official or employee, the same will be based on the record of the previous incumbent of the position.

Understanding taxpayer behavior is the key towards a rational system for allocating targets at the individual level. Such system will therefore evolve from, and be based on, a better understanding of taxpayer behavior. The BIR is expected to *strive* towards the ability to ascribe changes in taxpayer behavior to specific actions of its officials and employees. Predictability of taxpayer behavior is necessary if the allocation of

¹⁴Section 6(a), Rule II, Attrition Act of 2005 IRR. An example of a non-recurring transaction is when a billionaire taxpayer from a revenue district dies in a given year. Due to the magnitude of the taxes to be paid by the estate of said billionaire taxpayer (supposing no massive estate planning was involved), the district's collections increase dramatically for the year. However, since it is not every year that a billionaire taxpayer from the district dies, such increased collections will have to be deemed a non-recurring transaction and will, therefore, not necessarily jack up the revenue target for said district.

¹⁵Section 6(a), Rule II, *Id.*

revenue targets among BIR officials and employees is to have reasonable basis.¹⁶

C. The Rewards and Incentives Fund

Section 4 of the Attrition Act of 2005 creates the Rewards and Incentives Fund (the Fund) to be sourced from the collection of the BIR in excess of its revenue targets for the year, as determined by the DBCC. The Fund will be calculated according to the following percentages:

Table 1.1

<u>Excess of Collection Over the Revenue Targets</u>	Percent (%) of the Excess Collection to <u>Accrue to the Fund</u>
30% or below	15%
More than 30%	15% of the first 30% plus 20% of the remaining excess.

The Fund is deemed automatically appropriated, and will be released, on the year immediately following the year when the revenue collection target was exceeded.¹⁷

Incentives from the Fund will be apportioned among the various units, officials and employees of the BIR. Distribution of the incentives will be in proportion to the relative contribution of such units, officials and employees to the aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by the bureau.¹⁸

¹⁶Section 6(b), Rule II, *Id.*

¹⁷Paragraph 2, Section 4, Attrition Act of 2005

¹⁸Paragraph 4, *Id.*

a. Units

Incentives for units will be based on such units' relative contribution to the aggregate amount of excess revenue collection of the Bureau. However, a unit that does not meet its own revenue collection target will not be entitled to incentives even if the Bureau as a whole exceeds its revenue target. Under the IRR, a unit's relative contribution to the aggregate amount of the bureau's excess is a function of the percentage of such unit's excess collection over its target.¹⁹

b. Individuals

Individual incentives will also be calculated in accordance with an official's or employee's relative contribution to the aggregate amount of excess revenue collection of the BIR. Such relative contribution will be reflected in the performance evaluation rating of such official or employee.

In the case of officials and employees who have revenue collection functions,²⁰ their performance evaluation rating will take into account the performance rating of their respective units. Also, officials and employees who exercise greater responsibilities will have bigger incentives. Hence, those who occupy higher ranks will correspondingly be entitled to greater rewards and incentives. In addition, individuals holding positions subject to attrition are entitled to an additional premium in view of the risk of attrition inherent in such positions.

¹⁹Section 12(a)(i), Rule III, Attrition Act of 2005 IRR

²⁰For individuals performing support (i.e., non-revenue collection) functions, Section 12(a)(ii), Rule III, Attrition Act of 2005 IRR provides: "For purposes of rewards and incentives for Officials and Employees who provide support services to revenue collection but do not have direct revenue collection functions, the same shall be determined through the Performance Management System to be adopted by the Board for a particular Bureau in accordance with the provisions of Section 7 of the Act. This provision shall apply equally to Officials and Employees in Support Units as well as to those providing support services in Districts."

Officials and employees who are transferred in the middle of the period are entitled to a pro-rata share in the incentives.²¹

D. The District Incentive

In line with the policy to encourage officials and employees to exceed revenue targets, the Attrition Act of 2005 also rewards a revenue district that exceeds its target even if the entire BIR fails to meet its own revenue target by less than ten percent (10%). Such reward will be known as the District Incentive. The District Incentive is equivalent to ten percent (10%) of the excess over the district's allocated target. For a district to be entitled to the District Incentive, however, its allocated target must have been reported to and validated by the DBCC as required in Section 4 of the Attrition Act of 2005.²²

Similar to the Fund, the District Incentive is deemed automatically appropriated, and will be released, on the year immediately following the year when the revenue collection target was exceeded by the district.²³ However, since there is no BIR excess collection in this case, the District Incentive will have to come from congressional appropriations. Hence, the proposed annual budget of the BIR will incorporate an item that allocates an amount to

²¹Section 12(b)(i), *Id.*

²²Section 5, Attrition Act of 2005. Also under this provision, a revenue district, which deliberately foregoes any revenue collection in any given year as part of a scheme to avoid a higher allocated target for the subsequent year, will not be entitled to a District Incentive in such subsequent year notwithstanding its having exceeded its allocated target. Deliberately foregoing any revenue collection is defined in Section 13(b), Rule IV, Attrition Act of 2005 IRR as follows: "A District shall be deemed to have deliberately foregone revenue collection when, after it has reached or exceeded its annual target before the end of the year, its collection for the remaining period decreases significantly as compared to its collection for the same period in the previous year: *Provided*, That the remaining period shall at least be one (1) month. A decrease in collection of at least twenty percent (20%) shall be deemed significant unless extenuating circumstances similar to those enumerated in Section 18, Rule V are determined by the Board to be present."

²³Paragraph 2, Section 5, Attrition Act of 2005

cover the District Incentive taking into account the performance of the districts, among others. In the event the actual District Incentive exceeds the amount appropriated for said purpose in the budget, the difference will be added to the proposed allocation for the District Incentive in the succeeding year's budget of the BIR.²⁴

Attrition

A. Who are subject to attrition?

BIR officials and employees who have revenue collection targets are subject to attrition. They include district heads and assistant heads, revenue district officers and their assistants, supervisors and revenue officers who are assigned individual revenue collection targets. Such revenue collection targets are reflected in their respective performance contracts entered into pursuant to Section 7(b) of the Attrition Act of 2005 and Civil Service laws, rules, and regulations. The Commissioner of Internal Revenue (the Commissioner) is required to submit to the Board, not later than the end of the first quarter of the fiscal year, a list of BIR personnel subject to attrition.²⁵

B. How is attrition effected?

The Board, upon the recommendation of the Commissioner, may remove an official or employee from the service when the revenue collection performance of such official or employee falls short of the target by at least seven and a half percent (7.5%),²⁶ with due

²⁴Section 14, Rule IV, Attrition Act of 2005 IRR

²⁵Section 17, Rule V, Attrition Act of 2005 IRR; Cf. Section 33, Chapter 5, Subtitle A, Title I, Book V, Administrative Code of 1987.

²⁶Payments using tax credit certificates (TCCs) will be included in computing the revenue collection performance of a BIR official or employee pursuant to the last proviso of Section 18, Rule V, Attrition Act of 2005 IRR. It must be pointed out, however, that the inclusion of payments through TCCs in the determination of an official's or employee's revenue collection performance is only for purposes of attrition.

consideration of all *relevant factors*²⁷ affecting the level of collection as provided in Section 19 of the Attrition Act IRR. Attrition proceedings are, however, subject to civil service laws, rules and regulations and compliance with substantive and procedural due process.²⁸ Final decisions of the Board in attrition proceedings are immediately executory.²⁹

C. What circumstances exempt officials and employees from attrition?

Section 7(b) of the Attrition Act of 2005 provides the following exempting circumstances:

- a. Where the district or area of responsibility is newly-created, not exceeding two years in operation, and has no historical record of collection performance that can be used as basis for evaluation;³⁰ and

Such payments are not included in the determination of revenue collection performance for purposes of computing incentives.

²⁷SEC. 19. *Relevant Factors Affecting Collection.* - For purposes of Section 7(a) of the Act and Section 18 of this Rule, the Board shall consider the following, among others, as relevant factors affecting the level of collection: *Provided,* That these factors were not taken into account in setting BESF targets:

"(a) Enactment of a law that repeals revenue measures, reduces tax and tariff rates, grants tax exemptions, or otherwise results in the diminution of the tax base or of taxable transactions and activities, including the entry into force of a treaty or an international agreement that the Philippines entered into resulting in preferential treatment for certain taxpayers or transactions: *Provided,* That the Board shall have the final authority to determine the affected District or Districts as well as the amount of revenues deemed foregone due to such enactment or entry into force;

"x x x."

²⁸Section 7(b), Attrition Act of 2005

²⁹Section 7(c), *Id.*

³⁰Section 18(a), Rule V, Attrition Act of 2005 IRR; it further provides that: "A District or area of responsibility shall be deemed newly-created when it is established where no District or area of responsibility previously existed, or is carved out of the jurisdiction of an existing District or Districts or of an area or areas of responsibility, or is the result of the merger of two (2) or more Districts or areas of responsibility."

b. Where the official or employee is a recent transferee in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: *Provided, however,* That when the district or area of responsibility covered by officials or employees has suffered from economic difficulties brought about by natural calamities or *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.³¹

D. What are the remedies of personnel removed by attrition?

Employees³² who are removed from the service under paragraphs (b) and (c), Section 7 of the Attrition Act of 2005 may appeal to the Civil Service Commission (CSC) proper within fifteen (15) days from receipt of the denial of a Motion for Reconsideration of the Board's decision. Officials³³ similarly removed may appeal such decision to the Office of the President within the same period.³⁴

³¹Section 18(b), *Id.* It further provides that: "The performance of Officials and Employees who are transferred due to nonperformance of revenue targets or potential nonperformance of revenue targets shall be evaluated using their performance in their current and previous assignments on a pro-rata basis: *Provided,* that the power to transfer personnel due to nonperformance of revenue targets or potential nonperformance of revenue targets as embodied in Section 7(b)(2) of the Act shall be without prejudice to the power of the Commissioner of Internal Revenue to assign or reassign internal revenue Officers and Employees under Sections 16 and 17 of the National Internal Revenue Code x x x, in the best interest of the service and as often as the exigencies of the service may require."

³²Employees are rank-and-file personnel, regardless of employment status, who were appointed to and are occupying first or second level positions in the BIR pursuant to Section 8(a) and (b), Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987.

³³Officials are those who were appointed to and are occupying third level positions in the Bureau pursuant to Section 8 (c), Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987.

³⁴Section 9, Attrition Act of 2005, Section 49, CSC Resolution No. 94-0521, Section 12(11), Chapter 3, Subtitle A, Title I, Administrative Code of 1987; Cf. Sections 48 and 49, Chapter 6, Subtitle A, Title I, Book V, Administrative Code of 1987.

E. What is the nature of a removal by attrition?

BIR personnel who are removed from the service by virtue of Section 7(a) of the Attrition Act of 2005 are deemed ***dropped from the rolls*** in accordance with Civil Service laws, rules, and regulations.³⁵

F. Are there penalties other than attrition?

Yes. The power of the Board to remove BIR personnel only pertains to attrition under Section 7 of the Attrition Act of 2005. The Commissioner continues to exercise the power to discipline BIR personnel in accordance with the provisions of Rule IX of the Omnibus Rules Implementing Book V of Executive Order No. 292 (series of 1987), as amended, and other Civil Service laws, rules and regulations.

The Performance Evaluation Board

A. Composition

The Revenue Performance Evaluation Board is composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary as the Chairman; the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary; the Director General of the National Economic and Development Authority (NEDA) or his/her Deputy Director General; and as nonvoting members the Commissioner of Internal Revenue, or his/her Deputy Commissioner; two representatives from the rank-and-file employees; and a representative from the officials, both of whom shall be duly nominated by their respective recognized organization.³⁶

³⁵Section 21, Rule V, Attrition Act of 2005 IRR. Dropping from the rolls is a non-disciplinary means of removing personnel in the Civil Service. A person removed through this means is still entitled to separation benefits and privileges.

³⁶Section 6, Attrition Act of 2005

B. Powers and functions

Section 7 of the Attrition Act of 2005 enumerates the following powers of the Board:

- a. To prescribe the rules and guidelines for the allocation, distribution and release of the Fund due to the Bureau as provided for in Section 4 of the Act and for the allocation, distribution and release of the District Incentive due to a District as provided for in Section 5 of the Act: *Provided*, That the rewards under the Act may also take the form of non-monetary benefits;³⁷
- b. To set the criteria and procedures for removing from the service Officials and Employees whose revenue collection falls short of the target in accordance with Section 7 of the Attrition Act of 2005;
- c. To terminate personnel in accordance with the criteria adopted in Section 7(b) of the Attrition Act of 2005;
- d. To prescribe a system for performance evaluation;³⁸
- e. To perform such other functions as are necessary or incidental to its mandated functions, including the issuance of rules and

³⁷Section 25(a), Rule VI, Attrition Act of 2005 IRR states that "non-monetary benefits" include, but are not limited to, "official recognition in the form of plaques, citations, and commendations; added perks and privileges in the form of paid memberships in sports and recreation clubs, special parking spaces, and access to executive lounges; and additional benefits in the form of paid vacation, travel, and foreign training: x x x." It also provides that "Unit rewards and incentives shall not be distributed as additional salaries or added remuneration for such Unit's Officials and Employees."

³⁸Section 25(d), Rule VI, Attrition Act of 2005 IRR provides that the performance evaluation system to be adopted by the Board "shall be administered in such manner as to continually foster the improvement of individual efficiency and organizational effectiveness through the use of performance measures that include, but are not limited to, the following indicators: financial target, taxpayer compliance and satisfaction, process improvement, and organizational wellness."

regulations for the proper conduct of its functions; and

f. To submit an annual report to the Congress.

C. Secretariat support and budget

Section 26, Rule VI of the IRR creates a Secretariat to support the operations of the Board. It also provides that the budget to cover the expenses of the Board and of the Secretariat will be included in the annual appropriations of the DOF. In addition, it places the Board and the Secretariat under the DOF for purposes of administrative supervision.

Conclusion

Making the Attrition Act of 2005 work requires a fair and accurate mechanism for measuring performance whose results are not only verifiable but also susceptible to replication. The Performance Management System seeks to provide such a mechanism. When performance is fairly and correctly evaluated, as is sought under the Performance Management System, providing the appropriate rewards or sanctions will become less complicated. It will reward those who perform well and weed out unsuitable personnel either through attrition or, in the long run, through the prevailing performance evaluation rating system. By helping improve revenue collections, this system, together with the Attrition Act of 2005, will assist the government in addressing its fiscal problems.

22 May 2006

HON. MARGARITO B. TEVES
Secretary
Department of Finance
City of Manila

Dear Secretary Teves:

We transmit for your guidance and reference the attached Implementing Rules and Regulations of Republic Act No. 9335 (Attrition Act of 2005) as approved by the Joint Congressional Oversight Committee on Lateral Attrition.

Respectfully submitted,



REP. DANILO E. SUAREZ
Chairman-House Panel



SEN. RALPH G. RECTO
Chairman-Senate Panel

Copy Furnished:

Senate President Franklin M. Drilon
Senate of the Philippines

Speaker Jose de Venecia, Jr.
House of Representatives

**RULES AND REGULATIONS
TO IMPLEMENT REPUBLIC ACT NO. 9335,
OTHERWISE KNOWN AS THE "ATTRITION ACT OF 2005"**

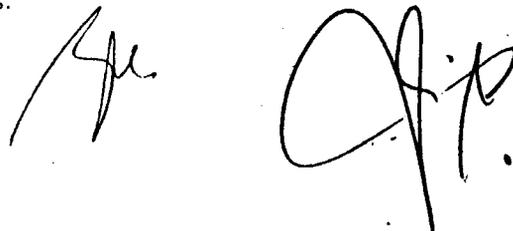
Pursuant to the provisions of Section 11 of Republic Act No. 9335, "An Act to Improve the Revenue Collection Performance of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) Through the Creation of a Rewards and Incentives Fund and of a Revenue Performance Evaluation Board and For Other Purposes," otherwise known as the "Attrition Act of 2005" (the Act), approved on January 25, 2005, and which took effect on February 11, 2005, conformably to Section 15 thereof, the Department of Finance (DOF), Department of Budget and Management (DBM), National Economic and Development Authority (NEDA), BIR, BOC, and Civil Service Commission (CSC), with the approval of the Joint Congressional Oversight Committee, hereby issue the following rules and regulations to implement the provisions of the Act.

RULE I. GENERAL PROVISIONS

SECTION 1. *Title.* These rules and regulations shall be referred to as the "Implementing Rules and Regulations of Republic Act No. 9335, otherwise known as the "Attrition Act of 2005."

SEC. 2. *Interpretation.* -- These Rules shall be interpreted in the light of the Declaration of Policy found in Section 2 of the Act:

"It is the policy of the State to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) by providing for a system of rewards and sanctions through the creation of a Rewards and Incentives Fund and a Revenue Performance Evaluation Board in the above agencies for the purpose of encouraging their officials and employees to exceed their revenue targets."





SEC. 3. *Coverage.* - These Rules shall cover all Officials and Employees in the BIR and the BOC, regardless of employment status, with at least six (6) months of service.

SEC. 4. *Definition of Terms.* - For purposes of these Rules, the following definition of terms is hereby adopted:

(a) *Act* - refers to Republic Act No. 9335, otherwise known as the Attrition Act of 2005.

(b) *Board* - refers to the Revenue Performance Evaluation Board created under Section 6 of the Act.

(c) *Bureau* - refers to either the BIR or the BOC, as the case may be.

(d) *District* -

In the case of the BIR, "District" refers to a revenue region: *Provided, however,* That the Large Taxpayer Service shall be deemed a District for purposes of the Act and these Rules.

In the case of the BOC, "District" refers to a collection district.

(e) *District Incentives* - are the rewards given to Districts that exceed targets under circumstances described in Section 5 of the Act.

(f) *Employee* - refers to a rank-and-file employee, regardless of employment status, who was appointed to and is occupying a first or second level position in the Bureau pursuant to Section 8(a) and (b),

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Chapter 2, Subtitle A, Title I, Book V, Administrative Code of 1987, Executive Order No. 292, hereinafter cited as the "Administrative Code."

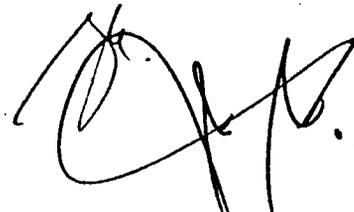
(g) *Fund* – refers to the Rewards and Incentives Fund created under Section 4 of the Act.

(h) *Official* – refers to an official, regardless of employment status, appointed to and occupying a third level position in the Bureau pursuant to Section 8 (c), Chapter 2, Subtitle A, Title I, Book V, Administrative Code. This term is herein used interchangeably with "Officer."

(i) *Revenue Collection* – means the total revenues collected by a Bureau as reflected in the final version of the Cash Operations Report of the Bureau of Treasury, net of Tax Remittance Advice and Tax Subsidy.

Additional revenues collected due to a new law enacted by Congress shall not be included in the computation of a Bureau's Revenue Collection if the additional revenues from such new law were not included in the original estimated Revenue Collection expected of the Bureau for a given fiscal year as stated in the Budget of Expenditures and Sources of Financing (BESF), net of Tax Remittance Advice and Tax Subsidies, submitted by the President to Congress.

(A) Additional revenues shall be determined by the ratio of the estimated revenues from the new law to the total estimated revenues inclusive of estimated revenues from the new law, multiplied by actual collection inclusive of revenues from the new law.

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(B) Revenue Collection shall be computed as actual collections less additional revenues.

Thus, additional revenues shall be computed as follows:

(A) Additional Revenue =

$$\frac{\text{Estimated Revenue from new measure}}{\text{BESF + Estimated Revenue from new measure}} \times \text{Actual collection}$$

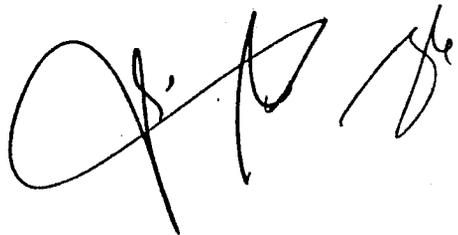
(B) Revenue Collection = Actual collection – Additional Revenue

(Example: In 2005, the Executive Department submitted to Congress a BESF stating that the BIR should collect P500 Billion for 2006. In 2006, a new revenue measure was passed and because of this, the BIR's 2006 targets were adjusted to P600 Billion. Since the new revenue measure was not considered in the BESF, this latter adjustment was not reflected in the BESF submitted in 2005. In 2006, the BIR collected P700 Billion. For purposes of determining rewards and incentives, how much did BIR actually collect? P583.33 Billion out of the revenue target of P500 Billion based on the following:

$$\text{Actual collection (P700B)} - \frac{\text{Estimated revenue from new measure (P100B)}}{\text{BESF (P500B) + Estimated revenues from new measure (P100B)}} \times \text{Actual collection (P700B)} = \text{P583.33 Billion}$$

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(j) *Support Units* – are units, offices, divisions and sections in the Bureau that provide support services to



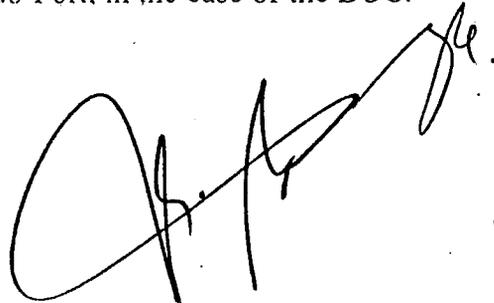
revenue collection but do not have assessment, audit or collection functions.

(k) *Tax Credit Certificate* – means a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these regulations.

(l) *Tax Remittance Advice* – refers to the accountable document to be issued by the concerned DBM office which shall be the basis for the national government agencies to record the remittance of all taxes withheld to the BIR. The same document shall be the basis for the BIR and the Bureau of Treasury to record the collection and deposit in their respective books of account.

(m) *Tax Subsidy* – subsidy given to the national government agencies, government corporations and local government units in lieu of payments of taxes and customs duties.

(n) *Unit* – For purposes of determining rewards and incentives under Section 4 of the Act, a Unit may refer to a Service, Revenue Region, District, Division, and Section, in the case of the BIR, and to a Collection District, Port, and Sub-Port, in the case of the BOC.

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RULE II. ALLOCATION OF REVENUE TARGETS

SEC. 5. *Revenue Targets.* -- Pursuant to Section 4 of the Act, revenue targets shall be based on the original estimated Revenue Collection expected of each Bureau for a given fiscal year, approved by the Development Budget Coordination Committee (DBCC) and stated in the BESF submitted by the President to Congress. DBCC shall formally communicate to the Board the revenue targets for each Bureau and these targets shall serve as the basis for implementing the Act: *Provided,* That, revenue targets shall exclude estimated yields from new revenue measures which, although included in the BESF, were not enacted into law: *Provided, further,* That estimated yields from new revenue measures that were enacted and implemented later than the original target dates in the BESF shall be pro-rated accordingly.

SEC. 6. *Allocation of Revenue Targets.* -- Each Bureau shall establish a system for rationally allocating revenue targets among its Districts, Officials and Employees.

(a) Revenue target setting for specific Districts shall consider, among others, the following factors: (1) the number of business establishments within the District and their historical sales and taxes paid; (2) the number of firms within the District that are engaged in the production and/or distribution of exciseable products and their historical sales and taxes paid; (3) the number of registered employers within the district, their total number of employees and the historical data on the withholding taxes paid. These factors should be the major determinants in setting the target revenue along with the District's historical record of revenue collection: *Provided, however,* That target setting shall likewise consider fluctuations in prior years' collections due to non-recurring transactions. Non-recurring transactions shall refer to one-time transactions which are substantial

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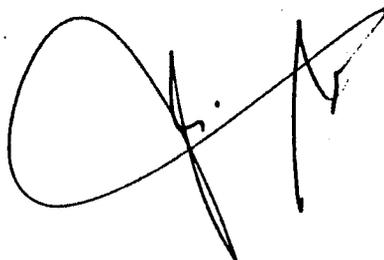
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in amount (i.e., the amount accounts for ten percent [10%] or more of a District's collections for a particular month), including the following: (i) capital gains taxes from the sales of real property or shares of stocks (on a per transaction basis), (ii) documentary stamp taxes, (iii) estate and donor's taxes, and (iv) special projects (e.g., the BIR's voluntary assessment program). Transfer of taxpayers from one District to another, when such taxpayers substantially account for such District's collections for the previous year, shall be taken into consideration in the allocation of targets among Districts.

(b) Similarly, target setting for individual Officials and Employees shall consider, among others, their historical record of revenue targets and of Revenue Collection or that of the previous incumbent of the position in the case of new appointees or newly-assigned Officials and Employees. The system for allocating revenue targets at the level of Officials and Employees shall strive towards the ability to ascribe changes in taxpayer behavior to specific actions of Bureau Officials and Employees. Such system shall therefore evolve from, and be based on, a better understanding of taxpayer behavior that enables the Bureau to predict and assess such behavior to a reasonable extent. Predictability of taxpayer behavior is necessary if the allocation of revenue targets among Bureau Officials and Employees is to have reasonable basis.

SEC. 7. *Reporting of Revenue Targets Distribution.* –The distribution of revenue targets shall be reported according to the following rules:

(a) Pursuant to Section 4 of the Act, each Bureau shall submit to the DBCC the distribution of the agencies' revenue targets as



allocated among its revenue Districts in the case of the BIR, and the collection Districts in the case of the BOC.

(b) For purposes of determining accomplishment of individual Revenue Collection targets, each Bureau shall likewise submit to their respective Boards the distribution of revenue targets as allocated among Officials and Employees who have revenue collection functions and as reflected in their individual performance contracts.

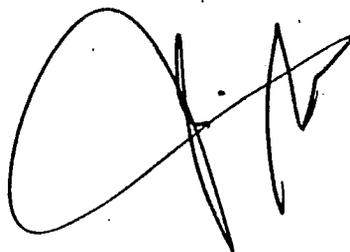
RULE III. REWARDS AND INCENTIVES FUND

SEC. 8. *Creation and Source.* – The Rewards and Incentives Fund, created under Section 4 of the Act, shall be sourced from the Revenue Collection of the BIR and the BOC in excess of their respective revenue targets of the year, net of Tax Credit Certificates, as determined by the DBCC. The Fund shall be calculated according to the following percentages:

<u>Excess of Revenue Collection</u> <u>Over the Revenue Targets</u>	<u>Percent (%) of the Excess</u> <u>Collection to Accrue</u> <u>to the Fund</u>
30% or below	- 15%
More than 30%	- 15% of the first 30% plus 20% of the remaining excess.

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The determination of whether or not a Bureau has exceeded its revenue target shall be made through a comparison of such Bureau's Revenue Collection with its revenue targets.



SEC. 9. *Automatic Appropriation of the Fund.* – Pursuant to Section 4 of the Act, the Fund shall be deemed automatically appropriated the year immediately following the year when the revenue collection target was exceeded and shall be released on the same fiscal year.

SEC. 10. *Allocation, Distribution and Release of the Fund.* – The Fund shall be allocated, distributed and released by the Board in each agency, in accordance with these Rules and the rules and regulations issued by the Board.

SEC. 11. *Submission of Expenditure Plans.* – At the beginning of the fiscal year, each Bureau shall submit to its Board an expenditure plan that shall govern the utilization of the Fund in the event the Bureau exceeds its target.

SEC. 12. *Distribution of Rewards and Incentives.* – Rewards and incentives from the Fund shall be apportioned among the various Units, Officials and Employees of each Bureau, in proportion to their relative contribution to the aggregate amount of the excess collection over the targeted amount of tax revenue to be collected by each Bureau. The Commissioner shall submit to the Board the proposed distribution of rewards and incentives from the Fund which shall be in accordance with the following framework and such other rules and regulations as may be issued by the Board:

(a) Unit rewards and incentives –

(i) Unit rewards and incentives shall be determined based on a particular Unit's proportionate contribution to the aggregate amount of excess revenue collection of the Bureau: *Provided, however,* That a Unit shall not be entitled to rewards and incentives even if the Bureau as a whole meets its revenue target if such Unit fails to meet

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its own Revenue Collection target. For the purposes of these Rules, a Unit's relative contribution to the aggregate amount of the Bureau's excess shall be a function of the percentage of such Unit's excess collection over its target.

(ii) A minimum of twenty five percent (25%) of the Fund shall be allocated by the Board as Unit reward and incentive.

(iii) Unit rewards and incentives shall be used for purposes of enhancing personnel development within the unit, implementing measures to improve collection efficiency, promoting training and personnel development and improving the work environment within the unit.

(iv) Unit rewards and incentives shall not be distributed as additional salaries, allowances, or any other additional emoluments or remuneration to such Unit's Officials and Employees:

(b) Individual rewards and incentives –

(i) Individual rewards and incentives shall be calculated in accordance with an Official's or Employee's relative contribution to the aggregate amount of excess revenue collection of the Bureau: *Provided*, That such relative contribution shall be reflected in each Official's or Employee's performance evaluation rating, which rating, in the case of Officials and Employees who have revenue collection functions, shall take account of the performance rating of their respective units: *Provided*,

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further, That higher rewards and incentives shall accrue to Officials and Employees who exercise greater responsibilities; hence, those who occupy higher positions shall correspondingly be entitled to greater rewards and incentives: *Provided, furthermore*, That individuals holding positions subject to attrition as provided for in Section 17, Rule V of these Rules shall be entitled to an additional premium in view of the risk of attrition inherent in such positions: *Provided, finally*, That an Official or Employee who is transferred in the middle of the period shall be entitled to a pro-rata share in the rewards.

(ii) An Official or Employee who is assigned and exceeds his or her revenue collection target shall receive rewards and incentives, which shall accordingly be increased or decreased based on other performance factors as provided by civil service laws, rules and regulations.

(iii) For purposes of rewards and incentives for Officials and Employees who provide support services to revenue collection but do not have direct revenue collection functions, the same shall be determined through the Performance Management System to be adopted by each Bureau in accordance with the provisions of Section 7 of the Act.

(iv) The immediately preceding Section shall apply equally to Officials and Employees in Support Units as well as to those providing support services in Districts.



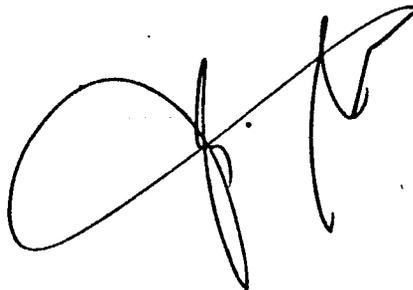
(c) Non-monetary rewards and incentives

Rewards and incentives may take the form of non-monetary benefits such as, but not limited to, official recognition in the form of plaques, citations, and commendations; health care; added perks and privileges such as special parking spaces and additional benefits in the form of paid vacation, travel, and foreign training.

RULE IV. DISTRICT INCENTIVES

SEC. 13. *Creation and Source of District Incentive.* – (a) In the event that a Bureau fails to meet its revenue target by less than ten percent (10%), Districts, which exceed their respective allocations of the revenue target (allocated target), shall be entitled to rewards and incentives (District Incentive) amounting to ten percent (10%) of the excess over its allocated target: *Provided, however,* That any District which deliberately foregoes any revenue collection in any given year as part of a scheme to avoid a higher allocated target for the subsequent year shall not be entitled to a District Incentive in such subsequent year notwithstanding its having exceeded its allocated target: *Provided, further,* That the allocated target of any such District shall have been reported to and validated by the DBCC as required in Section 4 of the Act.

(b) A District shall be deemed to have deliberately foregone Revenue Collection when, after it has reached or exceeded its annual target before the end of the year, its collection for the remaining period decreases significantly as compared to its collection for the same period in the previous year: *Provided,* That the remaining period shall at least be one (1) month. A decrease in collection of at least twenty percent (20%) shall be deemed significant unless





extenuating circumstances similar to those enumerated in Section 18, Rule V are determined by the Board to be present.

SEC. 14. *Automatic Appropriation of District Incentive.* – The district reward shall be deemed automatically appropriated the year immediately following the year when the Revenue Collection target was exceeded and shall be released in the same fiscal year. For this purpose, the proposed annual budgets of the BIR and the BOC shall respectively incorporate an item that allocates an amount to cover the District Incentive taking into account the performance of the districts, among others: *Provided,* That in the event the actual District Incentive exceeds the amount appropriated for said purpose in the budget, the difference shall be added to the proposed allocation for the District Incentive in the succeeding year's budget of the Bureau.

SEC. 15. *Allocation, Distribution and Release of District Incentive.* – The allocation, distribution and release of the district reward shall likewise be prescribed by the rules and regulations of the Board and in accordance with Sec. 12 (a) (ii) and (iii) of this Rules.

SEC. 16. *Submission of Expenditure Plans.* – At the beginning of the fiscal year, each District shall submit to the Commissioner an expenditure plan that shall govern the utilization of the District Incentive in the event the District becomes entitled to said incentive.

RULE V. ATTRITION AND OTHER PENALTIES

SEC. 17. *Personnel Subject to Attrition.* – For purposes of paragraph (b), Section 7 of the Act, personnel subject to attrition shall be Officials and Employees, including District heads and assistant heads, who have revenue collection targets.





These collection targets shall be reflected in their performance contracts that they shall enter into pursuant to Section 7(b) of the Act and Civil Service laws, rules and regulations. They shall also include revenue district officers and their assistants, supervisors and revenue officers who are assigned revenue collection targets, in the case of the BIR; and district/port collectors and their deputies, as well as customs officers assigned in services, divisions or units with collection targets, in the case of the BOC; and all other personnel of both Bureaus directly performing assessment, audit, and collection functions. The Commissioner shall submit to the Board, not later than the end of the first quarter of the fiscal year, a list of positions in the Bureau personnel that are subject to attrition.

SEC. 18. *Ground for Termination.* – An Official or Employee of the Bureau may be separated or removed from the service by the final decision of the Board, upon the recommendation of the Commissioner, when the revenue collection performance of such Official or Employee falls short of the target by at least seven and a half percent (7.5%), with due consideration of all relevant factors affecting the level of collection as provided in these Rules, subject to civil service laws, rules and regulations and compliance with substantive and procedural due process: *Provided, however,* That final decisions of the Board in this instance shall be immediately executory: *Provided, further,* That the determination of the revenue collection performance of an Official or Employee shall include payments using tax credit certificates: *Provided, furthermore,* That termination under this Section shall not apply:

(a) Where the District or area of responsibility is newly-created, not exceeding two years in operation, and has no historical record of collection performance that can be used as basis for evaluation. A District or area of responsibility shall be deemed newly-created when it is established where no District or area of responsibility previously existed, or is carved out of the jurisdiction of an existing District or

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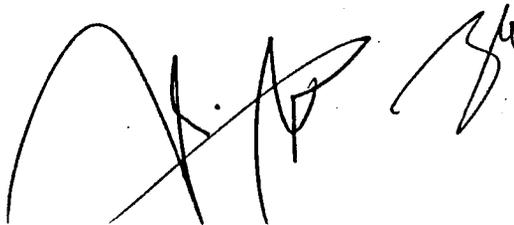
Districts or of an area or areas of responsibility, or is the result of the merger of two (2) or more Districts or areas of responsibility; or

(b) Where the Official or Employee is a recent transferee in the middle of the period under consideration unless the transfer was due to nonperformance of revenue targets or potential nonperformance of revenue targets: *Provided, however,* That when the District or area or responsibility covered by Officials or Employees has suffered from economic difficulties brought about by natural calamities or *force majeure* or economic causes as may be determined by the Board, termination shall be considered only after careful and proper review by the Board.

This Act shall be without prejudice to the power of the Commissioner of Internal Revenue to assign or reassign internal revenue Officers and Employees under Sections 16 and 17 of the National Internal Revenue Code or to the power of the Commissioner of Customs to assign Employees under Section 703 of the Tariff and Customs Code of the Philippines, in the best interest of the service and as often as the exigencies of the service may require.

SEC. 19. *Relevant Factors Affecting Collection.* – For purposes of Section 7(a) of the Act and Section 18 of this Rule, the Board shall consider the following, among others, as relevant factors affecting the level of collection: *Provided,* That these factors were not taken into account in setting BESF targets:

(a) Enactment of a law that repeals revenue measures, reduces tax and tariff rates, grants tax exemptions, or otherwise results in the diminution of the tax base or of taxable transactions and activities,




including the entry into force of a treaty or an international agreement that the Philippines entered into resulting in preferential treatment for certain taxpayers or transactions: *Provided*, That the Board shall have the final authority to determine the affected District or Districts as well as the amount of revenues deemed foregone due to such enactment or entry into force;

(b) Reduction by the President of tariff rates under Section 401 of the Tariff and Customs Code of the Philippines; and

(c) Exercise by the President of the power to open or close any port of entry under Section 702 of the Tariff and Customs Code of the Philippines.

SEC. 20. *Right to Appeal.* -- An official or employee whose employment is terminated by virtue of the decision of the Board may appeal to the Civil Service Commission (CSC) or the office of the President (OP), as the case may be, within fifteen (15) days from receipt of a copy of the decision of the Board.

For officials who are Presidential appointees, appeal may be filed with the Office of the President. All other officials and employees may appeal with the Civil Service Commission. Pending appeal, however, the decision of the Board shall be immediately executory.

Provided, however, that officials and employees affected by the decision may initially file a motion for reconsideration with the Board within fifteen (15) days from receipt of such decision.





Decisions of the Board shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no motion or appeal has been filed.

SEC. 21. *Non-Disciplinary Nature of Separation.* – Employees and Officials of the Bureau who are separated from the service by virtue of Section 7(a) of the Act shall be deemed dropped from the rolls in accordance with Civil Service laws, rules, and regulations, without prejudice to the receipt of whatever benefits due the official or employee concerned, including the re-employment to other government agencies, at the discretion of the appointing authority concerned.

SEC. 22. *Application of Other Laws on Accountability.* – The application of the criteria for separation of an Official or Employee from the service under the Act shall be without prejudice to the application of other relevant laws on accountability of public Officers and Employees, such as Republic Act No. 6713 (Code of Conduct and Ethical Standards of Public Officers and Employees) and Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended.

SEC. 23. *Penalties Other Than Termination.* – The power of the Board to remove personnel pursuant to Section 7 of the Act shall be without prejudice to the power of the Commissioner to discipline Bureau personnel in accordance with the provisions of Rule IX of the Omnibus Rules Implementing Book V of Executive Order No. 292 (series of 1987), as amended, and other Civil Service laws, rules and regulations.

RULE VI. REVENUE PERFORMANCE EVALUATION BOARD

SEC. 24. *Composition.* – Pursuant to Section 6 of the Act, the BIR and the BOC shall each have a Revenue Performance Evaluation Board, which shall be composed of the Secretary of the Department of Finance (DOF) or his/her

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Undersecretary as the Chairman; the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary; the Director General of the National Economic and Development Authority (NEDA) or his/her Deputy Director General. It shall also be composed of, as nonvoting members, the Commissioners of the BIR and the BOC, or their Deputy Commissioners; two representatives from the rank-and-file Employees; and a representative from the Officials, all of who shall be duly nominated by their respective recognized organizations.

SEC. 25. *Powers and Functions.* -- The Board in the agency shall have the following powers and functions:

- (a) To prescribe the rules and guidelines for the allocation, distribution and release of the Fund due to the Bureau as provided for in Section 4 of the Act and for the allocation, distribution and release of the District Incentive due to a District as provided for in Section 5 of the Act: *Provided,* That the rewards under the Act may also take the form of nonmonetary benefits as provided in Rule III.
- (b) To set the criteria and procedures for removing from the service Officials and Employees whose revenue collection falls short of the target in accordance with Section 7 of the Act;
- (c) To terminate personnel in accordance with the criteria adopted in the preceding paragraph;
- (d) To prescribe a system for performance evaluation that shall be administered in such manner as to continually foster the improvement of individual efficiency and organizational effectiveness through the use of performance measures that include, but are not limited to, the




following indicators: revenue target, taxpayer compliance and satisfaction, process improvement, and organizational wellness. For this purpose, the Bureau shall submit to the Board a system of performance evaluation for the Board's consideration.

(e) To perform such other functions as are necessary or incidental to its mandated functions, including the issuance of rules and regulations, circulars, memoranda, interpretations and rulings and coordinate with each other and provide support, whenever necessary, for the proper conduct of its functions; and

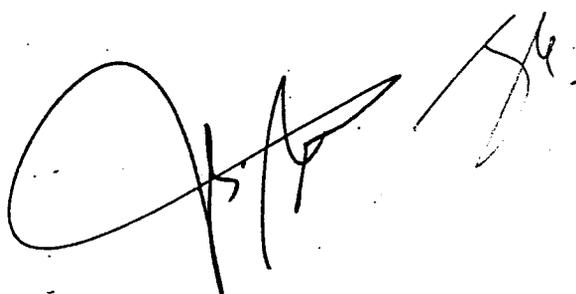
(f) To submit an annual report to the Congress.

SEC. 26. *Secretariat Support to and Budget of the Board.* – There is hereby created a Secretariat to support the operations of the Boards to be composed of personnel of the DOF as well as those detailed or seconded from other government agencies. The budget to cover the expenses of the Boards and the Secretariat shall be included in the annual appropriations of the DOF. The Boards and the Secretariat shall be under the DOF for purposes of administrative supervision.

RULE VII. LIABILITY OF OFFICIALS, EXAMINERS AND EMPLOYEES OF THE BIR AND BOC

SEC. 27. The officials, examiners, and employees of the Bureau who violate the Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by any business establishment or

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taxpayer as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

RULE VIII. PERFORMANCE REPORT

SEC. 28. *Report on Bureau Performance.* -- The Commissioners of each Bureau shall regularly file a report with the Board stating therein the status of collection in their respective agencies, and in the event of shortfall or surplus, the source of the shortfall or surplus, the personnel in-charge of the Unit, the explanation for the shortfall or surplus and the recommendation as to the remedial course of action in cases of shortfall, and in the case of the year-end report the names of Officers and Employees who are recommended for termination or reward.

The report shall be submitted semi-annually with the last report to be annualized. A copy of the report shall be submitted to Congress within two months after the period ends.

SEC. 29. *Report on Commissioner's Performance.* -- In the event of a shortfall in the national target, a separate report shall be submitted by the voting members of the Board to the Office of the President containing its evaluation of the performance of the Commissioner concerned on the basis of which the President may pursue a course of action consistent with the national interest. Said reports shall likewise be furnished to Congress.

RULE IX. ADMINISTRATIVE PROVISIONS

SEC. 30. *Required regular submissions.* -- As specified in the Act or these Rules, the following submissions shall be made:

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(a) *To the DBCC --*

The distribution of revenue targets among the Districts, as provided in Section 4 of the Act and Section 7(a) of the Rules, shall be submitted by each Bureau on or before the deadlines prescribed by the DBCC.

(b) *To the Board --*

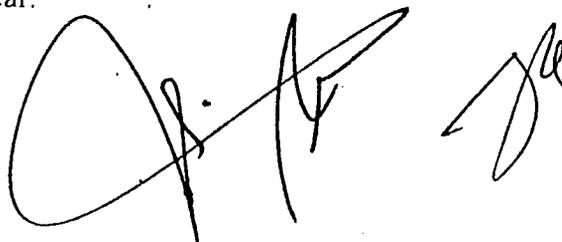
(i) The revenue targets for each Bureau, as provided in Section 4 of the Act and Section 5 of the Rules, shall be formally communicated by the DBCC after its approval.

(ii) The distribution of revenue targets among Officials and Employees, as provided in Section 7(b) of the Rules, shall be submitted by each Bureau on or before the deadline prescribed by the Board.

(iii) The expenditure plan governing the utilization of the Fund, as provided in Section 11 of the Rules, shall be submitted by each Bureau at the beginning of the fiscal year.

(iv) The proposed distribution of rewards and incentives among various Units, Officials and Employees of each Bureau, as provided in Section 12 of the Rules, shall be submitted by the Commissioner on or before the deadline prescribed by the Board.

(v) The list of positions in the Bureau subject to attrition, as provided in Section 17 of the Rules, shall be submitted by the Commissioner not later than the end of the first quarter of the fiscal year.

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(vi) The report on the Bureau's performance, as provided in Section 28 of the Rules, shall be filed semi-annually by the Commissioner.

(c) *To the Commissioner --*

The expenditure plan that shall govern the utilization of the District Incentive, as provided in Section 16 of the Rules, shall be submitted by each District at the beginning of the fiscal year.

(d) *To Congress --*

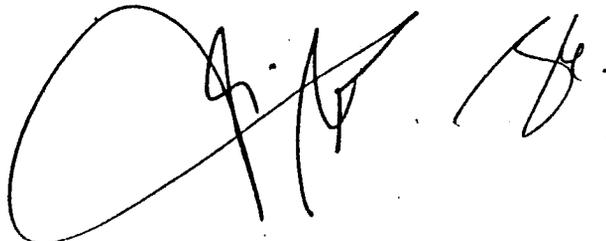
(i) The report on the Bureau's performance, as provided in Section 28 of the Rules, shall be submitted by the Board, within two months after each period covered by the report.

(ii) A report on the implementation of the Act, as provided in Section 7(f) of the Act and Section 28(f) of the Rules, shall be submitted by the Board.

(iii) The report evaluating the performance of the Commissioner submitted to the President, as provided in Section 29 of the Rules, shall be furnished by the voting members of the Board at the end of the fiscal year.

(e) *To the President --*

The report evaluating the performance of the Commissioner, if necessary, as provided in Section 29 of the Rules, shall be submitted by the voting members of the Board at the end of the fiscal year.



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SEC. 31. *Other submissions to the Board.* – For the effective implementation of the Act, the Bureau shall also submit to the Board for its approval the following:

- (a) The system for rationally allocating revenue targets among the Districts, Officials and Employees, as provided in Section 6 of the Rules;
- (b) The system for performance evaluation, as provided in Section 25(d) of the Rules, within a year from the effectivity of the Rules;

RULE X. FINAL PROVISIONS

SEC. 32. *Amendment to the Rules.* – The DOF, DBM, NEDA, BIR, BOC and CSC may jointly amend these Rules upon recommendation of the Board.

SEC. 33. *Transitory Provisions.* – For purposes of attrition under Section 18, Rule V of these Rules, the basis for evaluating the performance of revenue-collecting personnel shall be their individual performance contracts, that they shall enter into pursuant to Section 7(b) of the Act and Civil Service laws, rules and regulations, pending the Board's approval of a system that rationally allocates revenue targets at the level of Officials and Employees as provided for in Section 6(b), Rule II of these Rules: *Provided, however,* That within one (1) year from the effectivity of these Rules, the Board shall, upon the recommendation of the Commissioner, approve a system for performance evaluation that takes into account the system of rationally allocating revenue targets at the level of individual personnel.

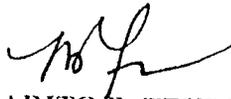
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SEC. 34. *Separability Clause.* – Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or legality of the other provisions.

SEC. 35. *Repealing Clause.* – Pursuant to Section 14 of the Act, all laws, presidential decrees, executive orders, other executive issuances, rules and regulations or parts thereof, including the provisions of Section 285 of Republic Act No. 8424, which are inconsistent with the Act are thereby repealed, amended or modified accordingly.

SEC. 36. *Effectivity.* -- These Rules shall take effect on the fifteenth (15th) day from the date of their publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

_____ 2006



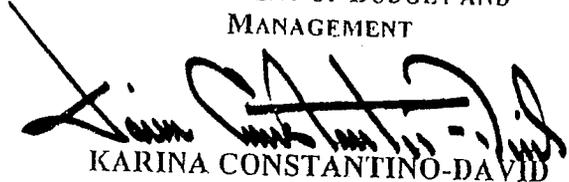
MARGARITO B. TEVES
Secretary
DEPARTMENT OF FINANCE



ROMULO L. NERI
Secretary
DEPARTMENT OF BUDGET AND
MANAGEMENT



AUGUSTO B. SANTOS
Director General
NATIONAL ECONOMIC DEVELOPMENT
AUTHORITY



KARINA CONSTANTINO-DAVID
Chairperson
CIVIL SERVICE COMMISSION



JOSE MARIO BUÑAG
Commissioner
BUREAU OF INTERNAL REVENUE



NAPOLEON MORALES
Commissioner
BUREAU OF CUSTOMS

Approved by the Joint Congressional Oversight Committee
this _____ day of _____ 2006

**Members of the
Joint Congressional Oversight Committee
On RA 9335**

For the House of Representatives:



HON. DANILO E. SUAREZ



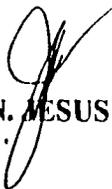
HON. ERIC D. SINGSON



HON. JESLI A. LAPUS



HON. FRANCIS L. NEPOMUCENO



HON. JESUS CRISPIN C. REMULLA

HON. FRANCIS JOSEPH G. ESCUDERO

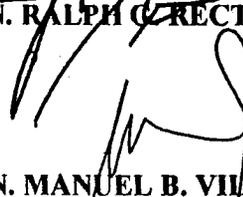


HON. RONALDO B. ZAMORA

For the Senate of the Philippines:



HON. RALPH RECTO



HON. MANUEL B. VILLAR JR.

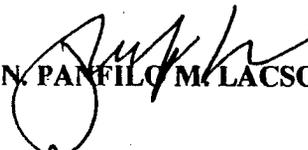


HON. JOKER P. ARROYO

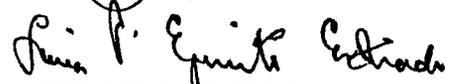


**HON. PIA "COMPAÑERA" S.
CAYETANO**

HON. MANUEL "LITO" M. LAPID



HON. PANFILO M. LACSON



**HON. LUISA "LOLOI" P. EJERCITO-
ESTRADA**

Venir T. Cuyco, Legal Adviser
Weekly Accomplishment Report
25-29 April 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
Finish first draft of IRR	<ul style="list-style-type: none">• Wrote the first draft of the IRR for R.A. 9335• Disseminated draft among members of the team for comments• Discussed with Dr. JP Vergara the rewards and penalties framework of the IRR.• Revised the first draft to incorporate the rewards and penalties framework discussed with JP.• Submitted revised draft IRR to the office of Usec. Bonoan for review and to request for a meeting to discuss the draft.	First two drafts of the IRR	The willingness of the team to meet and discuss project updates (and the draft IRR) even on a non-working holiday such as last Monday, 02 May 2005, facilitated the earlier revision of the draft IRR.	Drafting the IRR is a continuing process. Hence, this activity will recur up to the time the final draft is approved by the Congressional Oversight Committee.

Venir T. Cuyco, Legal Adviser
 Weekly Accomplishment Report
 09 – 13 May 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
<p>Continue revision of draft IRR upon consultation with team members and other stakeholders</p>	<ul style="list-style-type: none"> • Discussed draft IRR with DCIR Henares • Discussed draft IRR with members of the rewards component sub-team of the project • Revised certain provisions on rewards and attrition upon the suggestion of Orly Manalang. • Revised certain provisions upon the suggestion on DCIR Henares 	<p>Third revised draft of the IRR</p>	<ul style="list-style-type: none"> • During the meeting with DCIR Henares, it was brought up that the IRR being drafted may encounter resistance, if not outright opposition, from BIR personnel who, it was learned, are already in the process of drafting their own version. DCIR Henares pointed out that whatever these personnel may come up with will still need to be submitted to DOF (and, hence, will have to be evaluated by us), which has the final say on the matter as far as the Bureau is concerned. Obtaining a copy of such internal BIR draft will be helpful to the team inasmuch as it will indicate the understanding (aspirations as well as fears) of the law and its intent among BIR personnel. • Drafting the IRR is aided in no small measure by the existence of the PMS project in the BIR. However, the existing draft is skewed in favor of the proposed system in the BIR since we do not have a similar presence in the Bureau of Customs (BOC). 	<p>Efforts will be made to help ensure that the draft IRR will have language that takes into consideration the peculiarities of the BOC.</p>

Venir T. Cuyco, Legal Adviser
Weekly Accomplishment Report
16 – 20 May 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
<p>Further revision of draft IRR for R.A. 9335</p>	<ul style="list-style-type: none"> • Met Usec. Bonoan to discuss draft IRR. Also in the meeting was Atty. Araceli Habaradas, the principal technical assistant to Usec. Bonoan on this matter. • Met with Dr. JP Vergara and Orly Manalang to discuss the rewards framework under the Attrition Act as proposed to be implemented through the PMS project. • Revised draft IRR to incorporate comments and suggestions from Usec. Bonoan and Atty. Habaradas, as well as the revised rewards framework discussed with JP and Orly. • Furnished copies of revised draft to Usec. Bonoan, Atty. Habaradas, JP and Orly for further comments. 	<p>4th revised draft IRR (dated 18 May 2005)</p>		<ul style="list-style-type: none"> • Under the current draft, rewards and incentives for BIR and BOC personnel under the Attrition Act will be determined through the following criteria: individual performance rating (to be multiplied with or added to unit performance rating), rank, and "attritability" (that is, a certain premium is given to those occupying positions subject to attrition). • While rewards and incentives under Section 4 (when the Bureau exceeds its target) of R.A. 9335 are determinable through a more or less straightforward manner, the determination of rewards and incentives under Section 5 (the Bureau fails to meet its target but a unit exceeds its own) proves to be problematic. A unit that exceeds its target will be entitled to greater rewards if the Bureau fails to meet its target than when the Bureau meets such target or even exceeds it slightly. Thus, at a certain point, Section 5 provides a disincentive for certain units to collect more. JP's proposal is to still give the unit its reward even if the Bureau merely meets its target so as to minimize the disincentive to collect more. This proposal is reflected in Section 1(c), Rule IV of the draft, with the proviso: "That the District Incentive shall not be more than what the District would have been entitled to had the Bureau exceeded its revenue target by the amount of such District's excess."

Venir T. Cuyco, Legal Adviser
 Weekly Accomplishment Report
 30 May – 03 June 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
<ul style="list-style-type: none"> • 2nd TWG meeting • Consultation meeting with CSC representative 	<ul style="list-style-type: none"> • Prepared notes for Usec. Bonoan on the pending/ unresolved issues involving the draft IRR • Prepared revised working draft version of the IRR for dissemination among TWG members • Met with Atty. Claudette Agatep, Attorney VI, CSC NCR regional office, to discuss the appeals mechanism under the Attrition Act • Coordinated with DOF in the conduct of the 2nd TWG meeting • Participated in the 2nd TWG meeting last 01 June 2005 presided over by DOF Usec. Bonoan and attended by 	<p>Working draft of the Attrition Act IRR circulated among TWG members for comments and review</p>	<ul style="list-style-type: none"> • There was obvious interest in the IRR drafting process among representatives to the TWG, especially those coming from the BIR. With 6 representatives, the BIR group was the largest contingent to the TWG. • The existence of an internally prepared draft IRR from the BIR could help the drafting process, as it indicates the sentiments of BIR personnel on the Attrition Act. • It is hoped that BIR's designation as secretariat for the TWG will facilitate the drafting process given our presence (through our project) in the 	<ul style="list-style-type: none"> • The appeals mechanism in the event of attrition is among the more contentious provisions of the Attrition Act and the draft IRR. Usec. Bonoan wants this issue adequately addressed in the IRR and instructed me to sit down with the CSC representative to provide clear guidelines for appeals from decisions of the Board. • Usec. Bonoan inquired if it is possible to measure the actual effect of new revenue laws on revenue collections. This is in connection with the problem of how to attribute a

	<p>representatives from DBM, NEDA, CSC, BIR, and NTRC. Representatives from the office of Cong. Suarez were also present. BOC was not represented during the meeting.</p>		<p>Bureau.</p> <ul style="list-style-type: none"> • HREA Corazon Pangcog of LTS, who is a champion of our PMS Project, is among the BIR representatives in the TWG. Her presence in the TWG will help us introduce language in the draft IRR that lays the groundwork for the adoption of a performance evaluation framework based on the PMS Project. • DBM was not represented in the TWG meeting although I sent a copy of the working draft of the IRR to Usec. Pascua prior to the meeting. 	<p>portion of the increase in the Bureau's collection to the passage of a new revenue measure. Such increase in collections, when not included in the estimate of revenues submitted by the President to Congress through the Budget of Expenditures and Sources of Financing (BESF), will not be included in the computation of rewards for the Bureau in case it exceeds its target.</p>
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Venir T. Cuyco, Legal Adviser
 Weekly Accomplishment Report
 30 May – 03 June 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
<ul style="list-style-type: none"> • 2nd TWG meeting • Consultation meeting with CSC representative 	<ul style="list-style-type: none"> • Prepared notes for Usec. Bonoan on the pending/unresolved issues involving the draft IRR • Prepared revised working draft version of the IRR for dissemination among TWG members • Met with Atty. Claudette Agatep, Attorney VI, CSC NCR regional office, to discuss the appeals mechanism under the Attrition Act • Coordinated with DOF in the conduct of the 2nd TWG meeting • Participated in the 2nd TWG meeting last 01 June 2005 presided over by DOF Usec. Bonoan and attended by 	<ul style="list-style-type: none"> • Revised working draft of the Attrition Act IRR circulated among TWG members for comments and review • Notes on pending/unresolved issues in the draft IRR 	<ul style="list-style-type: none"> • Instead of the BIR, which was designated last 25 May 2005 as the secretariat of the TWG, Usec. Bonoan requested the NTRC to provide said secretariat services. NTRC, not being an “interested party” to the Attrition Act, will be able to maintain a neutral stance in the drafting process. • Discussions on target setting (in the preparation of the Budget of Expenditures and Sources of Financing [BESF] by the DBCC) were hampered by the absence of officials concerned with target setting from both DOF and DBM. It was resolved to invite them to the next TWG meeting. Also, representatives from the 	<ul style="list-style-type: none"> • The determination of what revenue target to use in assessing the collection performance of the Bureaus still remained a contentious issue. Since the preparation of the BESF involves a lot of assumptions, DBM felt that using the original revenue target in the BESF may not be fair to the Bureaus. When the assumptions in the BESF do not take place, its targets are correspondingly adjusted. NTRC pointed out, however, that the language of the Attrition Act leaves no room for doubt that it is the revenue target as contained in the BESF and as submitted by the President to Congress that will be

	<p>representatives from DBM, NEDA, CSC, BIR, and NTRC. Representatives from the office of Cong. Suarez were also present. BOC was not represented during the meeting.</p>		<p>office of Senator Recto will be invited to the next meeting.</p> <ul style="list-style-type: none"> The presence of staff members of Rep. Suarez's office helped in the discussions on the legislative intent behind the Attrition Act. It is hoped that the same input will be provided by members of Sen. Recto's staff in the next meeting. 	<p>used for purposes of the rewards framework of the Act. Hence, fairness dictates that targets in the BESF shall henceforth be more carefully prepared.</p> <ul style="list-style-type: none"> With regards to the issue of ascribing a portion of collections to the enactment of a new revenue measure, it was decided that a pro-rated approach be taken. A formula (similar to one being proposed by DCIR Henares) will be adopted for this purpose. Another issue that arose during the meeting pertained to the power of the Board to terminate personnel on the basis of poor performance (that is, failure to meet targets by at least 7.5%). It was resolved that the power resides with the Board although it is the Commissioner concerned who recommends termination. Where does the government get the funds for district
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				<p>incentives under Section 5 of the Attrition Act? This issue remained contentious, given the fact that, unlike the rewards in Section 4 of the Act, there is no excess in collection from which such incentives could be taken. Parenthetically, I shared with the TWG the possibility of the government's spending around 700 million pesos in rewards for BIR alone (even if the BIR missed its target by 29 billion pesos) using collection and target figures for fiscal year 2002. DBM proposed that to address this issue, an item (or provision) that allocates a contingent sum for purposes of the district incentives should be added in the annual Appropriations Act.</p>
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Venir T. Cuyco, Legal Adviser
 Weekly Accomplishment Report
 06 - 10 June 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
<ul style="list-style-type: none"> • 3rd TWG meeting • Continuing revision work of draft IRR 	<ul style="list-style-type: none"> • Prepared a matrix of pending issues and proposed amendments/ suggested revisions to draft IRR • Revised draft IRR in accordance with the agreements during the 2nd TWG meeting • Attended the 3rd and 4th TWG meetings held at the BIR last 08 June 2005 and at the BOC last 10 June 2005, respectively. 	<ul style="list-style-type: none"> • Matrix of pending issues and proposed amendments/ suggested revisions to draft IRR • Revised working version of draft IRR 	<p>I missed a part of the 4th TWG meeting held at the BOC due to the exceptionally bad traffic last 10 June 2005. Fortunately, I furnished a copy of the matrix of pending issues to Director Ma. Teresa Habitan of DOF in advance of the meeting. The TWG used the matrix as guide in the discussions during the meeting.</p>	<p>There is a possibility that the rewards allocation framework contained in the provisions of Section 4, Rule III of the draft IRR will be deleted from the proposed rules due to a proposal from NEDA. NEDA believes the said the detailed provisions are too operational for the Revenue Performance Evaluation Board to undertake. This framework embodies or at least makes possible the adoption of the proposed rewards framework of the PMS Project. Without the proposed provisions, it is possible that the BIR leadership, which will then have the latitude to recommend a rewards framework of its choosing to the Board for approval, could ignore the recommended rewards framework of the PMS Project. It is important that the standards that govern the allocation of rewards be embodied in the IRR of the Attrition Act.</p>

Venir T. Cuyco, Legal Adviser
 Weekly Accomplishment Report
 13 - 17 June 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
<ul style="list-style-type: none"> • Revisions of draft Attrition Act IRR • Refinement of transitory provisions of the draft 	<ul style="list-style-type: none"> • Revised the draft IRR based on the agreement and proposed amendments during the 08 and 10 June 2005 TWG meetings • Met with members of the PMS Project Team to report on progress of the IRR-drafting aspect of the Project • Met with members of the Team to discuss the transitory provisions of the draft IRR • Met with Jem Armovit, who represents Usec. 	<p>Attrition Act draft IRR as of 10 June 2005</p>	<ul style="list-style-type: none"> • The revision work on the draft IRR was delayed by my inability to obtain a copy of the Summary of Agreements that the National Tax Research Center (NTRC), as secretariat for the TWG, prepares after every TWG meeting. While a request for a copy of the summary was sent via email last Tuesday (14 June 2005), I have yet to receive said copy from NTRC as of this writing (17 June 2005). • Fortunately, I was given a copy of the summary of issues discussed and points agreed upon during the 10 June 2005 TWG meeting that Jem Armovit prepared for Usec. Pascua. 	<ul style="list-style-type: none"> • The inclusion of a definition for the term "Unit" in Section 4 ("Definition of Terms") of the draft IRR means that, for purposes of calculating unit rewards under Section 4 of the Attrition Act, the basis for computation is the performance of a revenue regional office for BIR and a collection district for BOC. • The current draft expanded the definition of "Revenue Collection" (Sec. 4[i], Rule I, draft Rules) by providing for the exclusion of additional revenues collected from the enactment of a new law if such additional revenues were not included in the original estimated revenue from the Bureau as stated in the Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress. • There is a proposal to make a portion of the 15% rewards (in case the excess is 30% or less) dependent on

	Pascua of DBM in the TWG, to discuss certain issues arising from the draft IRR			whether or not the unit's excess is greater than the Bureau's overall excess. This is supposedly designed to help ensure that collection units strive towards potential collection levels and never deliberately lower collection to influence allocation. I don't think, however, that this proposal is legally sound. While the law allows the Board to allocate, distribute and release the Fund, the law already pegs the reward at 15%. The affected units of the Bureau (that is, those that will be entitled to rewards) may thus question any diminution in said reward.
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Venir T. Cuyco, Legal Adviser
 Weekly Accomplishment Report
 20 - 24 June 2005

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
Continuing revision work on the draft Attrition Act IRR	<ul style="list-style-type: none"> • Continued revising the draft IRR based on the points agreed upon in the 10 June 2005 TWG meeting • Met with members of the PMS Project Team to report on progress of the IRR-drafting aspect of the Project • Met with members of the Team to discuss the rewards framework and transitory provisions of the draft IRR • Coordinated with the DOF on the holding of the next TWG meeting • Provided copies of the revised draft IRR to DOF and the offices of some members of Congress (potential members of the Congressional 	Revised Attrition Act draft IRR as of 10 June 2005	<ul style="list-style-type: none"> • The TWG meeting scheduled on 22 June 2005 did not push through due to the unavailability of key members of the TWG. The next TWG meeting is scheduled on 01 July 2005. • Even if the TWG is able to finish the draft IRR at this time, and the agency heads tasked to prepare the IRR approve the same, the approval will be delayed since the Congressional Oversight Committee that will approve the IRR has not yet been convened. Congress will have to vote on the composition of the Oversight Committee. Unfortunately, it cannot do so while it is in recess. Thus, the earliest that the Oversight Committee can be convened will be in the last week of July 2005 when Congress resumes its session. 	<ul style="list-style-type: none"> • The TWG during its 10 June 2005 meeting agreed that the Attrition Act became effective on 11 February 2005 or fifteen (15) days after it was published in two newspapers of general circulation. This, however, does not automatically mean that the law could already be implemented considering that most of its provisions are not self-executory and thus need more detailed rules and regulations for their implementation. My opinion is that the implementation of the Attrition Act should be reckoned from the time the IRR becomes effective. • It was suggested during the 10 June 2005 TWG meeting that rewards sharing between revenue-collecting personnel and support personnel should be 70-30 in favor of the former. It appears that this proposal aims to avoid the possibility of squabbles arising out of an uncertain sharing scheme by providing for fixed

	Oversight Committee that will approve the IRR)			<p>percentages in rewards sharing. However, our rewards specialist (Dr. JP Vergara) points out that fixing the sharing scheme at percentages similar to the one being proposed could result in an unintended consequence if the number of support personnel in a unit turns out to be lesser than the number of revenue personnel (e.g., one support personnel entitled to 30% will receive bigger rewards than, say, 7 revenue personnel who will divide the remaining 70% among themselves). Thus, if the intention is to give revenue personnel greater share in the rewards, JP suggests that the sharing scheme provision should contain language that says revenue personnel shall receive twice (or thrice or whatever sharing scheme is ultimately agreed upon) that of support personnel.</p>
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**Venir T. Cuyco, Legal Adviser
Weekly Accomplishment Report
27 June – 01 July 2005**

Planned Activities	Activities Undertaken	Output	Facilitating/ Hindering Factors	Remarks
Continuing revision work on the draft Attrition Act IRR	<ul style="list-style-type: none"> • Furnished copies of revised draft IRR (based on the agreements reached during the 10 June 2005 TWG meeting) to TWG members • Collated comments from TWG members on the 10 June 2005 revised draft IRR • Attended the 01 July 2005 TWG meeting at the DOF, presided over by Usec. Bonoan of DOF; present were other officials from DOF, DBM, CSC, BIR, BOC and NTRC 	Annotated revised version of the draft IRR as of 10 June 2005		<ul style="list-style-type: none"> • According to Usec. Bonoan, the 01 July 2005 meeting will be the last one for the TWG. During this last meeting, the TWG went through the draft IRR to approve the proposed provisions. However, there were sections and portions of the draft IRR where further changes were proposed. There were also parts where additional inputs from the Bureaus were needed (e.g., the list of support units in the BOC). Inasmuch as it was the last meeting, it was agreed that I will amend the draft IRR in accordance with the discussions during the meeting and the inputs from other TWG members. The amended version will then be furnished the members of the TWG for their comments and approval. • I am pleased to report that the TWG agreed that it is desirable (some even say it is necessary) to maintain the provisions of Section 12 (b) of the draft IRR. Said section embodies the rewards framework that will enable the Commissioner of Internal Revenue to propose to the Revenue Performance Evaluation Board the adoption of the rewards framework that embodies the PMS Project, thus: <ul style="list-style-type: none"> “(b) Individual rewards and incentives – <ol style="list-style-type: none"> 1. (i) The Board shall calculate individual rewards and incentives in accordance with an Official's or Employee's relative contribution to the aggregate amount of excess revenue collection of the Bureau: <i>Provided</i>, That such relative contribution shall be reflected in each Official's or Employee's performance evaluation rating, which rating, in the case of Officials and Employees who have revenue collection functions, shall take account of the performance rating of their respective units: <i>Provided, further</i>, That higher rewards and incentives shall

				<p>accrue to Officials and Employees who exercise greater responsibilities; hence, those who occupy higher ranks shall correspondingly be entitled to greater rewards and incentives: <i>Provided, furthermore,</i> That individuals holding positions subject to attrition as provided for in Section 17, Rule V of these Rules shall be entitled to an additional premium in view of the risk of attrition inherent in such positions: <i>Provided, finally,</i> That an Official or Employee who is transferred in the middle of the period shall be entitled to a pro-rata share in the rewards. “</p> <ul style="list-style-type: none">• Another important agreement reached during the last meeting was the retention of the provisions of Section 6(b) of the draft IRR on the need to come up with a rational system for allocation of targets at the individual level. This, members of the TWG believe, will provide the Bureaus with something to aspire for and will help them in making the target allocation process at the individual level a fair exercise. Said section states thus: “(b) Similarly, target setting for individual Officials and Employees shall consider, among others, their historical record of revenue collection or that of the previous incumbent of the position in the case of new appointees or newly-assigned Officials and Employees. The system for allocating revenue targets at the level of Officials and Employees shall strive towards the ability to ascribe changes in taxpayer behavior to specific actions of Bureau Officials and Employees. Such system shall therefore evolve from, and be based on, a better understanding of taxpayer behavior that enables the Bureau to predict and assess such behavior to a reasonable extent. Predictability of taxpayer behavior is necessary if the allocation of revenue targets among Bureau Officials and Employees is to have reasonable basis.”
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