



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

11 September 2018

DOF Opinion No. 001.2018

MR. FREDERICK V. ERUM

President

Forming Access & Support, Inc.
DMCI Complex, Levi Mariano Avenue,
C-5 Highway, Barangay Ususan,
Taguig City, Metro Manila

**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling
No. 267-2017**

Dear **Mr. Erum**:

This refers to the subject letter dated 24 August 2017 ("Request for Review") which you filed with this Department on behalf of Forming Access & Support, Inc. ("FASI") to request for review of Bureau of Internal Revenue ("BIR") Ruling No. 267-2017 dated 5 June 2017, which ruled on the tax exemption/incentive application of Mr. Erum and Forming Access & Support, Inc. ("FASI") with the BIR through its Law and Legislative Division pursuant to Republic Act (RA) No. 7459 and BIR Revenue Regulations (RR) No. 19-93.¹

In particular, the Request for Review prays for the amendment of BIR Ruling No. 267-17 on the application for tax exemption privilege of Mr. Erum and FASI provided under RA No. 7459 which allegedly limited the exemptions granted to Mr. Erum and did not grant any to FASI. The pertinent portion of the BIR Ruling No. 267-2017 provides:

The said exemption can be availed of by inventor, Mr. Erum, during the first ten (10) years from the date of the first sale on a commercial scale which is on May 19, 2014, provided that said exemption privileges pertaining to the invention shall be extended to the legal heir or assignee upon the death of the inventor. (BIR Ruling No. 226-2014 dated June 25, 2014)

It is understood that the tax incentive/exemption under R.A. No. 7459, as implemented by Revenue Regulations (RR) No. 19-93, is for the inventor, Mr. Erum, and not for the company or entity that produced/distributed and/or marketed the invention. Hence, any income received by Forming Access & Support, Inc. from such production/distribution/marketing is subject to the payment of appropriate taxes. (BIR Ruling No. 226-2014 dated June 25, 2014)

¹ The Department of Finance received the certified true copy of the docket of the case transmitted by the BIR on 10 November 2017.

It is important to note that the Final Resolution of the Office of the President (OP), in OP Case No. 03-G-422 dated February 2, 2004, affirming the finding of the Department of Finance denying the appeal of an inventor relative to his tax exemption privileges granted by this Office, clarifies that the tax exemption granted by the first paragraph of Section 6 of RA 7459 refers only to income tax.

It is your position, as stated in your Request for Review, that the tax exemption provided in Section 6 of R.A. No. 7459 should also extend to FASI as the exemption is attached to the technology or invention itself regardless of whoever produces, manufactures and/or markets the same for commercial purposes. The Request for Review has the following arguments:

14. It is most respectfully submitted that, contrary to the ruling of the Honorable BIR Commissioner, the tax exemption/privilege should extend to the company that produces, distributes and/or markets the invention products and technologies and that the Honorable BIR Commissioner should not remove or limit the tax exemption privileges expressly provided by RA 7459 as implemented by BIR Revenue Regulations No. 19-93.

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18. xxx The law did not require that the commercialization of the invention must be done by the inventor himself. That being said, the tax exemption is attached to the technology or invention itself regardless of whoever produces, manufactures and/or markets the same for commercial purposes. xxx

xxx

20. Comparing Sections 5 and 6 of RA 7459, it is clear that Section 5 is limited to the inventor only as expressly stated while on the other hand, Section 6 does not distinguish whether or not the production, manufacture or sale of the technology or invention has been made by the inventor himself or by any other entity. If the legislators intended otherwise, then, they should have expressly stated that the tax exemption covers inventors only, as what they did under Section 5.

We agree with the BIR.

A circumspect reading of Section 6² of RA No. 7459 vis-a-vis Section 2³ of the same Act, reveals the intent of the Congress to limit the tax exemption privilege to the

² SECTION 6. Tax Exemption. — To promote, encourage, develop and accelerate commercialization of technologies developed by local researchers or adapted locally from foreign sources including inventions, any income derived from these technologies shall be exempted from all kinds of taxes during the first ten (10) years from the date of the first sale, subject to the rules and regulations of the Department of Finance: Provided, that this tax exemption privilege pertaining to invention shall be extended to the legal heir or assignee upon the death of the inventor.

The technologies, their manufacture or sale, shall also be exempt from payment of license, permit fees, customs duties and charges on imports.

(Inventors and Invention Incentives Act of the Philippines, § 6)

³ SECTION 2. Declaration of National Policy and Program. — It is hereby declared to be the national policy to give priority to invention and its utilization on the country's productive systems and national life; and to this end provide incentives to inventors and protect their exclusive right to their invention,

original inventor. While Section 6 does not specifically mention that the exemptions therein only applies to the inventor, this should be read in conjunction with Section 2. Further, congressional records disclose that it is in the legislative intent of RA No. 7459 that only the original inventor is entitled to the tax incentives.⁴

It is a fundamental rule in statutory construction that the clauses, phrases, sections and provisions of a law be read as a whole; never as disjointed or truncated parts,⁵ for a law is enacted as a single entity and not by installment of paragraphs here and subsections there. Moreover, a law should not be so construed as to produce an absurd result.⁶ Applying the rules on statutory construction, it must be read that the purpose of Section 6 of RA No. 7459 is to exempt the income derived by the inventor from the technologies and invention. To say that the tax exemption is attached to the technology or invention itself regardless of whoever produces, manufactures, and/or markets the same, would create absurd result in that it would allow anyone to claim the tax exemption privilege by alleging that it acts as the producer, manufacturer, and/or marketer of the technology or product. This may lead to numerous claimants asking for the benefits provided under RA No. 7459.

To be clear, the government's purpose in enacting RA No. 7459 or the Inventors and Invention Incentives Act of the Philippines is to provide incentives to inventors and protect their exclusive right to their invention, particularly when it is beneficial to the people and contributes to national development and progress. Limiting the tax exemption privilege only to the original inventor does not contradict this policy. By not extending the tax exemption privilege to the producer, manufacturer, and/or marketer of the technology or product does not necessarily prevent the original inventor from availing of the government's assistance in the full commercialization of his invention or product through other means or approach.

Further, RR No. 19-93 was issued which prescribed guidelines and procedures for the availment by Filipino Inventors of tax incentives and tax exemptions provided under RA No. 7459. A reading of the said implementing rules depicts that the tax exemption privilege should only be granted to Filipino inventors.⁷

As aptly resolved by the Court of Tax Appeals in the case of *Splash Corporation v. Commissioner of Internal Revenue*,⁸ the tax incentive or exemption privilege granted by RA No. 7459 should only be given to Filipino inventors and not to any third-party company or entity who may derive income from the inventor's invention.

Considering that the tax exemption under Section 6 of RA No. 7459 pertains only to the original inventor and inventor has allegedly considerable interest and control in company which produces, manufactures and/or markets the technology/product for commercial purposes, the inventor and company cannot be considered one and the same. It is a fundamental principle in Corporation Law that a corporation is an entity

particularly when the invention is beneficial to the people and contributes to national development and progress.

⁴ *Splash Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 8483, 6 April 2017

⁵ *Samar II Electric Cooperative, Inc. vs. Estrella Quijano*, G.R. No. 144474, 27 April 2007.

⁶ *Ang Giok Chip vs. Springfield*, G.R. No. 33637, 31 December 1931.

⁷ *Splash Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 8483, 6 April 2017.

⁸ C.T.A. Case No. 8483, 6 April 2017.

separate and distinct from its shareholders. In the case of *Aboitiz Equity Ventures, Inc. v. Victor S. Chiongbian*,⁹ the Supreme Court explained that even the ownership by a single stockholder of all or nearly all the capital stock of a corporation is not, in and of itself, a ground for disregarding a corporation's separate personality.

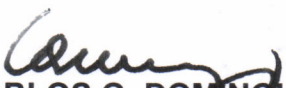
It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted.¹⁰ Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris.¹¹ Hence, since Section 6 of RA No. 7459 does not expressly provide that the tax exemption can extend to the corporation which produces, manufactures and/or markets the technology/product for commercial purposes, it cannot, therefore, be presumed.

Moreover, we affirm the findings of BIR that the tax exemption refers to income tax only as similarly held in a long line of BIR Rulings¹² and decisions of the Court of Tax Appeals.¹³

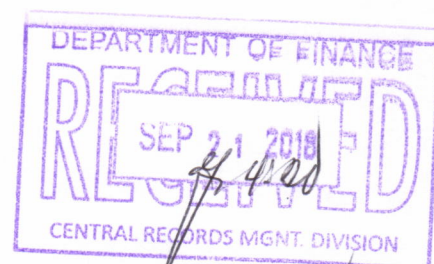
This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

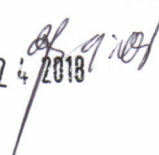
Thank you.

Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
SEP 14 2018

CC **Commissioner Caesar R. Dulay**
Bureau of Internal Revenue



SEP 24 2018


⁹ G.R. No.197530, 9 July 2014.

¹⁰ Radio Communications of the Philippines, Inc. v. Provincial Assessor of South Cotabato, G.R. No. 144486, 13 April 2005.

¹¹ Commissioner of Internal Revenue v. A.D. Guerrero, G.R. No. L-20942, 22 September 1967.