



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF OPINION NO. 003 . 2022

ATTY. ALEXANDER B. CABRERA

Chairman Emeritus

ISLA LIPANA & CO.

29th Floor, Philamlife Tower

8767 Paseo de Roxas, 1226 Makati City

**SUBJECT: Request for Review of Bureau of Internal Revenue (BIR)
Document No. M-118-2021 dated 28 June 2021**

Dear Atty. Cabrera:

This refers to the subject Request for Review dated 30 July 2021, that you filed on behalf of your client, PMFTC Inc. (PMFTC).¹ PMFTC filed with the BIR a request to revisit (i) Revenue Regulations (RR) No. 3-2008 which covers the rules on advance deposit of excise tax for exports, and (ii) RR No. 7-2014 which requires the affixture of internal revenue stamps on cigarettes and other tobacco products bound for export. Specifically, PMFTC requests clarification on whether it can post an export bond for cigarettes and other tobacco products bound for export, and whether cigarettes and other tobacco products intended for export should be subject to internal revenue stamps, in the form of unique identifier code (UIC), given that these products are not subject to excise tax under the existing law.

In reply, we regret to inform you that the subject Request for Review is denied because this Office has no jurisdiction to rule thereon.

The rules provide that the validity of a regulation should be raised before the Court of Tax Appeals (CTA) which court is vested with jurisdiction to rule on the controversy as provided under Section 7 of Republic Act No. 1125, as amended.²

¹ PMFTC is a domestic corporation engaged in the business of manufacturing and distributing cigarettes and other tobacco products within and outside the Philippines. On 1 June 2021, PMFTC merged with Philip Morris Philippines Manufacturing Inc. (PMPMI), with PMFTC as the surviving entity. PMPMI is a domestic corporation primarily engaged in the cigarette industry. It manufactures, processes, packs, buys, sells on wholesale, distributes cigarettes and other tobacco products for export.

² Banco De Oro v. Republic, G.R. No. 198756 (Resolution). August 16, 2016.

On the other hand, Section 4 of the Tax Code, as amended, vests the Secretary of Finance the power to review rulings issued by the Commissioner that taxpayers adversely affected have elevated for review. In *Banco De Oro v. Republic*,³ the Supreme Court clarified the rules to be observed by taxpayers who wish to question the validity of regulations and other issuances of the BIR or this Department, thus:

“In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.”

It bears emphasis that these RRs enjoy a strong presumption of validity. In *ABAKADA Guro Party List v. Purisima*,⁴ the Court has extended the presumption of validity to legislative issuances as well as to rules and regulations issued by administrative agencies, saying:

“Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the

³ *Id.*

⁴ G.R. No. 166715. August 14, 2008.



presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.”

This Office notes that the request to revisit the subject RRs before the BIR Commissioner is tantamount to a direct challenge of their validity, which existing rules or procedures proscribe since the proper remedy to question the validity of revenue regulations rests with the CTA. What cannot be done directly, cannot also be done indirectly. In fine, the instant Request for Review is denied for reasons above discussed.

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

Thank you.

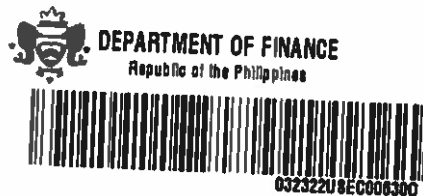
Very truly yours,



CARLOS G. DOMINGUEZ

Secretary

MAR 18 2022



CC: **HON. CAESAR R. DULAY**
Commissioner, Bureau of Internal Revenue

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