



Republic of the Philippines
DEPARTMENT OF FINANCE

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DOF Opinion No. 005.2018

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10/22/18
OCT 22 2018

SUBJECT: Request for Review of Bureau of Internal Revenue Ruling No. 158-2014

Dear **Atty. Abangan**:

This refers to the subject letter dated 14 January 2015 ("Request for Review") which you filed with this Department on behalf of Cebu III Electric Cooperative, Inc. ("CEBECO") to request the review of Bureau of Internal Revenue ("BIR") Ruling No. 158-2014 dated 30 May 2014, which ruled that:

Accordingly, this Office opines that CEBECO's income from its electric service operations is subject to income tax. Beginning January 1, 2010, however, CEBECO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended on December 31, 2009, the thirtieth full calendar year after the date of the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing, whichever event comes first. (BIR Ruling No. 398-2013 dated November 4, 2013)

xxx

Upon the effectivity of R.A. 9337, the exemption from VAT of electric cooperatives was removed. Consequently, Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, particularly Section 4.108-2 (13) and Section 4.108-3 (f) provide that sales of electricity by generation, transmission, and/or distribution companies are now subject to now 12% VAT on their gross receipts. Provided, however, that sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

It is your position, as stated in your Request for Review, that CEBECO is permanently exempted from the payment of income taxes as provided in number (1), paragraph (a), Section 39, of Presidential Decree ("PD") No. 269.¹

We agree with the BIR.

In December 1986, then President Corazon C. Aquino issued Executive Order ("EO") No. 93² which withdrew all tax and duty exemptions granted to private entities effective 10 March 1987. Tax and duty incentives, however, are not withdrawn for those that are approved by the President upon the recommendation of the Fiscal Incentives Regulatory Board ("FIRB"). Further, section 2 of EO No. 93 grants FIRB the following powers:

- a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;
- b) revise the scope and coverage of tax and/or duty exemption that may be restored;
- c) impose conditions for the restoration of tax and/or duty exemption;
- d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;
- e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.³

Effective 1 July 1987, FIRB Resolution No. 24-87 restored the tax and duty exemption privileges of electric cooperatives under PD No. 269. It is clear from FIRB Resolution No. 24-87 that the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of PD No. 269 were restored with an exception for income from their electric service operations, that is, **that the income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable.**

In the case of *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental*,⁴ the validity of FIRB Resolution No. 24-87 was recognized. This is anchored on the claim that at the time then President Corazon Aquino issued EO No. 93, she was exercising both executive and legislative power,⁵ thus, she has the power to delegate

¹ SEC. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.*— Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, a cooperative (1) **shall be permanently exempt from paying income taxes**, ... (emphasis supplied) National Electrification Administration Decree, Presidential Decree No. 269, § 39 (5 September 1973).

² Withdrawing All Tax and Duty Incentives of the Fiscal Incentives Review Board, Executive Order No. 93, (17 December 1986).

³ EO No. 93 (s. 86), § 2.

⁴ G.R. No. 170901 (20 January 2009), 596 PHIL 705-714.

⁵ *Maceda v. Macaraig, Jr.*, G.R. No. 88291 (Resolution) (8 June 1993).



to the FIRB the power to restore and limit the tax and duty privileges of electric cooperatives.

It should be noted that the repealing clause of the Philippine Cooperative Code of 2008, which amended the Cooperative Code of the Philippines, did not mention anything about PD No. 269. Further, Article 130⁶ of the same Code provides that electric cooperatives registered with the National Electrification Administration (“NEA”) under PD No. 269, as amended, which opt not to register with the Cooperative Development Authority (“CDA”) shall not be entitled to the benefits and privileges under the Philippine Cooperative Code of 2008.

CEBECO remains with the NEA. No allegation was made that it transferred to the CDA. In view of the foregoing, this Office affirms the ruling of the CIR, specifically, that the income of CEBECO from electric service operations and other sources remains taxable in accordance with FIRB Resolution No. 24-87.

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.⁷ It is clear that the intent of EO No. 93 is to deter tax manipulation or avoidance. It has been observed that the privileges have become convenient opportunities for tax manipulation or avoidance. The EO, then, encourages private entities whose tax and duty exemption privileges are to be withdrawn to still remain competitive by improving on their operational capacity and competence, rather than by relying on fiscal incentives which create distortions in the overall pricing and market systems.⁸ Therefore, the income of CEBECO from electric service operations and other sources is not tax exempt.

Please note that under the Tax Reform Act of 1997, as amended by the Tax Reform on Acceleration and Inclusion (TRAIN) Law, the phrase 'sale or exchange of services,' which is subject to twelve percent (12%) VAT on their gross receipts, now includes sales of electricity by distribution companies, including electric cooperatives. Moreover, RR No. 16-2005, as amended by RR No. 13-2018, has reflected the same.

In light of the foregoing, this Office affirms the ruling of the CIR.

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.


⁶ ART. 130. Registration Options of Electric Cooperatives. — Electric cooperatives registered with the National Electrification Administration (NEA) under Presidential Decree No. 269, as amended, which opt not to register with the Authority are allowed to retain the word 'cooperative' in their registered names: Provided, That they shall not be entitled to the benefits and privileges under this Code. Philippine Cooperative Code of 2008, § 130.

⁷ Radio Communications of the Philippines, Inc. v. Provincial Assessor of South Cotabato, G.R. No. 144486, 13 April 2005.

⁸ Executive Order No. 93, [December 17, 1986]

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Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
OCT 17 2018



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

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