



DOF OPINION NO. 005.2024

MR. DONG WON CHOI

President
KC N A Philippines, Inc.
Calamba Premier International Park
Special Economic Zone

**SUBJECT: REQUEST FOR REVIEW OF BUREAU OF INTERNAL REVENUE
RULING NO. OT 086-2023**

Dear **Mr. Dong Won Choi**:

This refers to your letter dated 06 March 2024 ("Request for Review") requesting the review of Bureau of Internal Revenue ("BIR") Ruling No. OT 086-2023 dated 24 August 2021, where the BIR ruled that KC N A Philippines, Inc. ("KCNA") is subject to excise tax on their importation of Ethyl Alcohol (Denatured Anhydrous Ethyl Alcohol) and SE-5 (Toluene 95%) pursuant to Section 141 in relation to Section 134 of the National Internal Revenue Code of 1997, as amended ("NIRC").

Under DOF Department Order (DO) No. 007-02,¹ a taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue (CIR) may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance (SOF).² As the BIR Ruling was received on 13 February 2024, KCNA had until 14 March 2024 to file the subject Request for Review. Since the DOF received your BIR-endorsed ruling on 06 March 2024, this Office notes that the above jurisdictional requirement has been met.

¹ Providing for the Implementing Rules of the First Paragraph of Section 4 of the National Internal Revenue Code of 1997, repealing for this purpose Department Order No. 005-99 and Revenue Administrative Order No. 1-99.

² Section 3 of DO No. 007-02.

The BIR's Ruling

The BIR ruled that KCNA's importation of Ethyl Alcohol (Denatured Anhydrous Ethyl Alcohol) and SE-5 (Toluene 95%) is not exempt from excise tax for lack of legal basis as Section 134 of the NIRC only exempts domestic alcohol. It also ruled that such importation should be taxed under Section 148 (D) or Section 141 depending on whether it shall be used for motive power or subsequently rendered fit for oral intake through fermentation, dilution, purification, mixture, or any other similar process.

According to the assailed ruling, the conditions laid down in Section 134 are of no moment since the provision categorically pertains only to domestic alcohol.

KCNA's Position

In its Request for Review, KCNA posited the following grounds for the excise tax exemption of their importation of Ethyl Alcohol (Denatured Anhydrous Ethyl Alcohol) and SE-5 (Toluene 95%):

1. That imported denatured alcohol should be treated similarly to domestic denatured alcohol. Following BIR Ruling No. 040-00 dated 13 September 2000, Sections 141 and 134 of the NIRC should be read with Section 131(B) which states that "unless otherwise specified imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles." While Section 141 provides for the general application of excise tax on all distilled spirits based on removal, Section 134 treats domestic denatured alcohol as exempt subject to conditions. Applying Section 131(B), imported denatured alcohol, subject to the same conditions as domestic denatured alcohol, should also be exempt from excise taxes;
2. Republic Act No. (R.A.) 10351 did not amend Section 134 of the NIRC and is still considered a good law; and
3. The discriminatory distinction between imported and local distilled spirits has been resolved by the World Trade Organization (WTO) through the issuance of a ruling.

The DOF's Ruling

We agree with the BIR Ruling on the matter. This Department rules to deny the request for Review as KCNA is not exempt from excise taxes on its importation of Ethyl Alcohol (Denatured Anhydrous Ethyl Alcohol) and SE-5 (Toluene 95%).

Section 141 of the NIRC, as amended, provides:

“SEC. 141. *Distilled Spirits.* - On distilled spirits, subject to the provisions of Section 133 of this Code, an excise tax shall be levied, assessed and collected based on the following schedules:

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(D) Effective January 1, 2023

(1) An ad valorem equivalent to twenty-two percent (22%) of the net retail price (excluding the excise tax and the value-added tax) per proof; and

(2) In addition to the ad valorem tax herein imposed, the specific tax of Fifty-nine pesos (P59.00) per proof liter.

(E) Effective January 1, 2024

(1) An ad valorem equivalent to twenty-two percent (22%) of the net retail price (excluding the excise tax and the value-added tax) per proof; and

(2) In addition to the ad valorem tax herein imposed, the specific tax of Sixty-six pesos (P66.00) per proof liter.

xxx

'Spirits or distilled spirits' is the substance known as **ethyl alcohol**, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.

xxx

Manufacturers and **importers** of distilled spirits shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every third month thereafter, submit to the Commissioner a sworn statement of the volume of sales and removals for each particular brand of distilled spirits sold at his establishment for the three-month period immediately preceding.” (Emphasis supplied)

Denatured alcohol, whether domestic or imported, falls within the definition of spirits as provided under Section 141 of the NIRC.

In turn, Section 134 of the NIRC provides that:

"SEC. 134. Domestic Denatured Alcohol. — Domestic alcohol of not less than one hundred eighty degrees (180^o) proof (ninety percent (90%) absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141: *Provided, however,* That such denatured alcohol shall be subject to tax under Section 106 (A) of this Code: *Provided, further,* That if such alcohol is to be used for motive power, it shall be taxed under Section 148 (d) of this Code: *Provided, finally,* That any alcohol, previously rendered unfit for oral intake after denaturing but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process shall be taxed under Section 141 of this Code and such tax shall be paid by the person in possession of such reprocessed spirits."

The BIR found that the above provision categorically pertains to DOMESTIC alcohol and nothing in the said provision mentioned about IMPORTED ALCOHOL.

It is a settled rule in a long line of cases that tax exemptions must be couched in clear language and are strictly construed. If an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all.³

Further, it is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. According to the plain-meaning rule or *verba legis*, when the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is expressed in the maxims *index animi sermo est* or "speech is the index of intention," and *verba legis non est recedendum* or "from the words of a statute there should be no departure."⁴

Applying these principles, Section 134 of the NIRC, as amended, shall be strictly construed against the taxpayer.

In the case at bar, the law granting exemption from taxation under Section 134 of the NIRC is clearly limited to "Domestic Denatured Alcohol." There is no justification for us to liberally construe that law. In this jurisdiction, it has been the

³ Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, G.R. No. 140230 dated December 15, 2005, as cited in Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue, G.R. No. 211327 dated November 11, 2020.

⁴ Padilla v. Congress of the Philippines, G.R. Nos. 231671 & 231694, July 25, 2017 citing Bolos v. Bolos, 648 Phil. 630, 637, 2010.

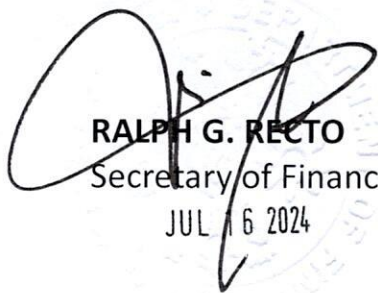
constant and uniform holding that exemption from taxation is not favored and is never presumed.⁵

In claiming exemption from taxation, KCNA must discharge the burden of establishing the existence of such exemption, for which, in this case, KCNA failed. Hence, the importation of KCNA of Ethyl Alcohol (Denatured Anhydrous Ethyl Alcohol) and SE-5 (Toluene 95%) does not qualify for exemption from excise taxes.

In view of the foregoing, this Department resolves to affirm BIR Ruling No. OT 086-2023. Kindly note that this ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it is disclosed that the facts are different, then this ruling shall be considered null and void.

Thank you.

Very truly yours,


RALPH G. RECTO
Secretary of Finance
JUL 16 2024



Copy furnished:

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⁵ Commissioner of Internal Revenue vs. A.D. Guerrero, G.R. No. L-20942, September 22, 1967.