



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 007.2022

HON. ROYINA M. GARMA

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Mandaluyong City

**SUBJECT : Request for Review of Bureau of Internal Revenue
Ruling No. VAT 283-21 dated 02 August 2021**

Dear **General Manager Garma**:

This refers to your letters dated 05 October 2021 ("Request for Review"), which you filed with this Department to request the review of Bureau of Internal Revenue ("BIR") Ruling No. VAT 283-21, which ruled that the sale of Small Town Lottery ("STL") tickets does not pertain to the conduct of horse races nor the sale of horse race sweepstakes which are exempted from all taxes under Section 4 of Republic Act No. 1169, and is, thus, subject to value-added tax ("VAT").

PCSO Charter

In 1954, Republic Act (RA) No. 1169, otherwise known as *An Act Providing for Charity Sweepstakes Horse Races and Lotteries* ("PCSO Charter"), was enacted into law and mandated the PCSO, under Section 4 thereof, to hold charity horse race sweepstakes under such regulations promulgated in accordance with RA 309, otherwise known as *An Act to Regulate Horse-Racing in the Philippines*.

On the taxability of such horse race sweepstakes, Section 4 of RA 1169 provides:

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The horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp and that from the total prize fund as provided herein from the proceeds of the sale of tickets there shall be deducted an amount equivalent to one and one-half per centum of such total prize fund, which shall be paid to the Bureau of Internal Revenue not later than ten days after each sweepstakes in lieu of the income tax heretofore collected from sweepstakes prize winners: *Provided, However,* That any prizes that may be paid out from the resulting prize fund, after said one and one half per centum has been deducted, shall be exempt from income tax.

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In 1979, Batas Pambansa Blg. 42 was enacted into law amending the PCSO Charter (RA 1169). Section 1 of RA 1169 was amended to read as follows:

Sec. 1. The Philippine Charity Sweepstakes Office. The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One thousand four hundred fifty-nine, as amended, and shall have the authority:

- A. To hold and conduct charity sweepstakes races, lotteries, and other similar activities, in such frequency and manner, as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors.

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Small Town Lottery

To address the mounting financial commitments to its beneficiaries, the PCSO needed additional sources of funds. Consequently, the PCSO launched the Small



Town Lottery (STL), which was meant to generate more funds to provide greater help for local projects. It likewise aimed to eradicate *jueteng*, *masiao*, and other similar illegal numbers games, then rampant in the countryside, with the use of computers and new technology.

In 2018, the Committee on Games and Amusements of the House of Representatives (“HoR”) stressed the need to properly account the collections and receivables from STL Authorized Agent Corporations (AACs) through the use of Official Retail Receipts (ORR).

In 2020, the PCSO issued the 2020 Small Town Lottery Revised Implementing Rules and Regulations (“STL RIRR”) as part of PCSO’s efforts to improve its regular games. It included the following provision:

Section 21. AACs shall use tickets authorized and prescribed by the PCSO, without prejudice to the future use of fixed/handheld terminals or similar devices. For this purpose, PCSO shall issue guidelines for the implementation of STL Official Retail Receipts (STL ORR).

On 02 August 2021, the CIR issued BIR Ruling No. VAT-283-2021, where he ruled that PCSO will be liable for VAT even if an ORR is not issued, for as long as the transaction is found to be subject to VAT. In more specific terms, the BIR ruled:

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In general, it is not the issuance of receipts or invoices that will subject a taxpayer to VAT but the nature of the transaction itself, which the taxpayer executes. Thus, even if an ORR is not issued, for as long as the transaction is found to be subject to VAT, then the taxpayer will still be liable for VAT.

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Relative thereto, please take note of Section 4 of RA No. 1169, as amended, which states that “(t)he horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes x x x”. Based on the aforesaid provision, it is clear that it is not PCSO *per*



se, as an entity, that is exempt from tax but its activity, specifically, the “horse races and the sale of tickets in the said sweepstakes”.

Analyzing the provision in Section 4, the following are exempted from tax:

1. The horse races, and
2. The sale of tickets in the said sweepstakes.

Since there is no issue about horse races, then we shall go to the second exemption. On its face, the law states that the exemption is on “the sale of tickets in the said sweepstakes”. It is not just any sweepstakes but the “said” sweepstakes, which, referring to Section 4 above, is the “charity horse race sweepstakes”.

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Based on the foregoing, considering that the sale of STL tickets does not pertain to the conduct of horse races nor the sale of horse race sweepstakes, then it is not covered under the exemption in RA No. 1169, as amended, and is therefore subject to VAT. (Emphasis ours)

On the other hand, in your Request for Review, you argued that:

- a. The PCSO cannot be liable for VAT in the sale of tickets in its STL Game since [the] PCSO Charter and earlier BIR Rulings consistently ruled that PCSO’s sale of tickets shall be exempt from taxes, including VAT.
- b. STL is also a form of lottery, and thus exempt from taxes, such as VAT.

ISSUE

The sole issue that must be resolved in the case at hand is whether the PCSO is indeed liable to VAT on its receipt of payments for the price of the STL tickets.



DISCUSSION

The DOF rules in favor of the PCSO and rules that the receipt of payments for the price of the STL tickets by the PCSO is not subject to VAT.

The receipt of payments for the price of the STL tickets is not a sale of goods nor of services

Under the 2020 STL RIRR, STL refers to the PCSO's mass-based local lottery in provinces, or in highly urbanized or independent component cities. STL includes activities such as collection of bets, issuance of tickets, conduct and holding of draws, payments to winners and remittances, and other related activities.

In 1969, the Supreme Court, citing American Jurisprudence, had the chance to touch upon the elements of a lottery,¹ explaining:

There is no statutory definition of the terms "lottery" and "gift enterprise". This Court, in the case of "El Debate" Inc., vs. Topacio, *supra*, referring to lottery, said:

". . . while countless definitions of lottery have been attempted, the authoritative one for this jurisdiction is that of the United States Supreme Court, in analogous cases having to do with the power of the United States Postmaster General, *viz*: The term 'lottery' extends to all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs, etc., and various forms of gambling. The three essential elements of a lottery are: First, consideration; second, prize; and third, chance (Horner vs. United States [1902] 147 U.S. 449; Public Clearing House vs. Coyne [1903] 194 U.S., 497; U S. vs. Filart and Singson [1915] 30 Phil., 80; U.S. Olsen and Marker [1917] 36 Phil. 395; U.S. vs. Baguio [1919] 39 Phil. 962; Valhalla Hotel Construction Company vs. Carmona, p. 233, *ante*.)"

¹ *Uy v. Palomar, G.R. No. L-23248, [February 28, 1969], 136 PHIL 492-510*



Thus, for lottery to exist, three elements must concur, namely: consideration, prize, and chance.

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From the definition, it can be said that in a lottery, a bettor or purchaser parts of some consideration for the chance to win the prize of the lottery or sweepstakes. As in the instant case, the payment for the price of the STL ticket is the consideration for the chance to win the prize offered by the PCSO in the STL draw.

The very crux of the issue at hand is whether the receipt of payments for the price of the STL tickets can be characterized as a sale of goods or services that would fall within the definition under the National Internal Revenue Code of 1997 (NIRC), as amended, thereby making PCSO liable to VAT.

It is our position that the receipt of payments for the price of the STL tickets by PCSO is neither a sale of goods nor a rendition of services.

Section 105 of the NIRC provides:

Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase "***in the course of trade or business***" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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From the provision of the NIRC above, VAT may be imposed on the following:

- c. Sale, barter, exchange or lease of goods or properties;
- d. Sale, exchange, or rendition of services; and
- e. Importation of goods into the Philippines.

Section 106(A)(1) of the NIRC defines goods or properties, to wit:

The term “**goods**” or “**properties**” shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

- (a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
- (b) The right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;
- (c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment;
- (d) The right or the privilege to use motion picture files, tapes and discs; and
- (e) Radio, television, satellite transmission and cable television time.

We opine that an STL ticket itself is not a good capable of pecuniary estimation because it does not have an innate value per se. In fact, we believe that a bettor does not purchase a ticket because he/she desires to receive a PCSO ticket, but because he/she desires to place a bet in the lottery, and the ticket merely represents or otherwise evidences the bettor’s stake in the lottery.



We take the position that what the bettor received by obtaining an STL ticket is a claim to a potential interest in the prize money. Further, it does not fall under the enumeration in the cited provision of the NIRC. Therefore, receipt of payments for the price of the STL tickets by the PCSO should not be considered a sale, barter, exchange, or lease of goods or properties for VAT purposes.

Section 108(A) defines “*sale or exchange of services*” as:

...the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking of goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sale of electricity by generation companies, transmission by any means entity, and distribution companies, including electric cooperative; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; **and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.** xxx xxx (*Emphasis ours*)




When a bettor obtains an STL ticket, the PCSO does not perform a service in such a way that it calls for the exercise or use of the physical or mental faculties in exchange for a fee, remuneration or consideration. The price paid by the bettor represents his bet in the lottery. Akin to the earlier discussion, the bettor merely receives, at most, an expectation, or a potential claim to the prize.

We conclude, therefore, that the very nature of lottery, lottery tickets, and receipt of payments for the price of such lottery tickets is not a sale of goods or services that are subject to VAT.

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 null and void.

Thank you.

Very truly yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
MAY 11 2022



CC: Commissioner Caesar R. Dulay
Bureau of Internal Revenue