



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 009.2018

Mr. Frederick V. Erum
DMCI Complex, Levi Mariano Avenue
C-5 Highway, Brgy. Ususan, Taguig City

Jw 11/14

**SUBJECT: Request for Review of Bureau of Internal Revenue (BIR)
Ruling No. 190-2015**

Dear **Mr. Erum**,

This refers to your Request for Review dated 24 July 2015 ("Request for Review") which you filed with this Department to request the review of BIR Ruling No. 190-2015 dated 10 June 2015 ("BIR Ruling"), 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, otherwise known as the Inventors and Invention Incentives Acts of the Philippines, and BIR Revenue Regulations (RR) No. 19-93.

Based on the records, you are a *bona fide* inventor and accredited member of the Filipino Inventors Society, Inc. ("FIS"), per Certification dated 31 January 2013. It was further presented that you are the President of FASI, a domestic corporation registered with the Securities and Exchange Commission ("SEC") and that you concurrently own substantial shares constituting 99.5% ownership of FASI.

We also understand that you are the inventor of "A Table Form Support System for Concrete Forming" is being commercially produced, distributed, and marketed by FASI. Details of the patented invention are as follows:

Invention	Registration No.	Date Issued	Date of First Sale
A Table Form Support System for Concrete Forming ("Invention")	1-2006-000417	15 October 2012	29 March 2012

The Invention is eligible for the tax incentives under RA No. 7459¹ per Certification dated 31 January 2013² issued by the FIS and confirmed by the Screening Committee in its Confirmation Certificate dated 21 March 2013.³ This being the case, as President of FASI, you applied for tax exemption or incentive privileges with the BIR through its Law and Legislative Division⁴.

¹ Inventors and Invention Incentives Act of the Philippines, Republic Act No. 7459 (28 April 1992).

² Please see Annex D of the attached Request for Review.

³ Please see Annex C of the attached Request for Review.

⁴ Please see Page 138 of CTC Records from BIR. Received by the BIR on 4 April 2013.

FASI is the corporation you tasked, as the Filipino Inventor, in the production, manufacture, distribution and/or marketing of the technology/invention and resultant products, one of which is the "A Table Form Support System for Concrete Forming", the technology/product involved in the controversy.

On 1 July 2015, you received a copy of the BIR Ruling issued by the BIR in response to your application for tax exemption pursuant to RA No. 7459. The ruling granted your request for tax exemption with the following limitations (1) resolving that any income of FASI from the production, distribution, and marketing is subject to the payment of appropriate taxes, and (2) the tax exemption does not extend to FASI and is limited only to you as intended by RA No. 7459. The pertinent portion of the BIR Ruling provides:

"The said exemption can be availed of by inventor, Inventor Frederick V. Erum, during the first ten (10) years from the date of the first sale on a commercial scale which is on March 29, 2012, 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. 473-13 dated 18 December 2013)

"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, Frederick V. 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."

Hence, on 24 July 2015, as President of FASI, you filed the Request for Review which prays for the reversal of the BIR Ruling. In your Request for Review, you argue that the BIR Ruling unduly removed or limited your tax exemptions and that of FASI, the company you represent, which are enshrined in RA No. 7459 and BIR RR No. 19-93.⁵

We agree with the BIR.

The Tax Exemptions can be Enjoyed by the Inventor Only

Based on your Request for Review, you argue 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.

Foremost, As aptly resolved by the Court of Tax Appeals in the case of *Splash Corporation v. Commissioner of Internal Revenue*,⁶ the tax incentive or exemption privilege granted by RA No. 7459 should only be given to Filipino investors and not to any third-party company who may derive income from the inventor's invention. The pertinent decision is herein quoted:

⁵ RR No. 19-93 dated 27 July 1993.

⁶ C.T.A. Case No. 8483, 6 April 2017.

“As afore-discussed extensively, and given the various yet complementing provisions of RR No. 19-93, there is no denying that the tax incentive/exemption under RA 7459 is **vested on the Filipino inventor whose privilege may be transferred to his legal heir/s or assignee/s only upon his death and not to any third-party company or entity who may derive income from the inventor’s invention.**” (emphasis supplied)

Furthermore, a reading of Section 6⁷ of RA No. 7459 vis-a-vis Section 2⁸ of the same Act, reveals the intent of the Congress to limit the tax exemption privilege to the original inventor. Section 2 is herein reproduced to highlight the relevant provision:

“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,** particularly when the invention is beneficial to the people and contributes to national development and progress.”⁹ (emphasis supplied)

While Section 6 does not specifically mention that the exemptions therein only apply to the inventor, this should be read in conjunction with Section 2.

Further, congressional records disclose that it is in the legislative intent of law that only the original inventor is entitled to the tax incentives.¹⁰ Consistent with the legislative intent to provide incentives to the original inventors, Section 6 should be construed to refer only to you, as the inventor, and should not include FASI.

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,¹¹ for a law is enacted as a single entity and not by installment of paragraphs here and subsections there.

⁷ 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)

⁸ 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, particularly when the invention is beneficial to the people and contributes to national development and progress.

⁹ Inventors and Invention Incentives Act of the Philippines, § 2.

¹⁰ *Splash Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 8483, 6 April 2017 citing the Congressional records wherein it is discussed that when Representative Mario S. Ty was asked during deliberation with respect to the tax incentives provision of House Bill No. 24801, which later became RA 7459, he was clear and categorical in saying that the tax incentives pertain exclusively to the original inventor,

¹¹ *Samar II Electric Cooperative, Inc. vs. Estrella Quijano*, G.R. No. 144474, 27 April 2007.

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 is to provide incentives to investors 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. The allegation that the assistance of the government to Filipino investors in full commercialization has been removed by the BIR through the assailed ruling has no basis in fact. 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.

Frederick V. Erum and FASI are Separate and Distinct Personalities

It is a fundamental principle in Corporation Law that a corporation is an entity separate and distinct from its shareholders. In the case of *Aboitiz Equity Ventures, Inc. v. Victor S. Chiongbian*,¹² the Supreme Court further explained:

“[E]ven 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.” (emphasis supplied)

Had the inventor opted to convert itself to a corporate entity which, in turn, obtained the corresponding accreditation from the FIS, the corporate entity would then be entitled to the tax exemption as, in essence, the corporation becomes the inventor. In the case at bar, however, you remain the inventor while FASI undeniably stands as a party separate and distinct from the inventor- a third party.

Moreover, the Confirmation Certificate dated 21 March 2013¹³ from the Screening Committee was issued in your favor only. The same Certification further recognized that the tax exemptions must conform with the regulations and/or issuances from the Department of Finance through the BIR.

This Office finds no reason to treat you and FASI one and the same. And having ascertained that the tax exemption granted under Section 6 of RA No. 7459 pertains only to the inventor, this Office is not inclined to sustain your position, as to extend the tax-exempt privilege to FASI would certainly amount to judicial legislation.

¹² G.R. No. 197530, 9 July 2014.

¹³ Please see Annex C of the attached Request for Review.

Tax Exemptions are Strictly Construed Against the Taxpayer and in Favor of the Taxing Authority

The drive of your argument is that the tax exemption is attached to the technology or invention itself. You, further, corroborated your claim by comparing Sections 5¹⁴ and 6 of RA No. 7459 concluding that, unlike Section 5, Section 6 is not explicit in limiting the tax exemption to investors, hence, "the legislators never intended to limit the application of Section 6 to investors only."

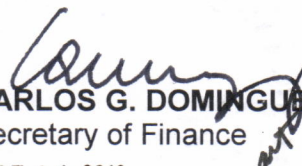
This contention, however, runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the rule that exemptions from taxation are construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.¹⁵ Tested by this precept, this Office cannot indulge in your expansive construction and write into the law an exemption not therein set forth.

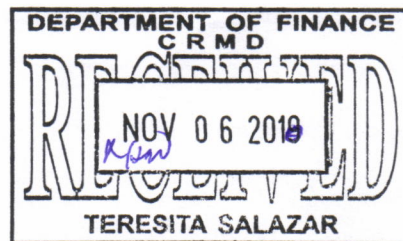
Accordingly, we agree with BIR Ruling No. 190-2015 that the tax exemption granted by RA No. 7459 can be enjoyed by the inventor only and not by separate entities *that produces, distributes, and/or markets the invention. Moreover, we affirm the findings of BIR that the tax exemption refers to income tax only as similarly held in a long line of BIR Rulings¹⁶ and decisions of the Court of Tax Appeals.¹⁷*

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.

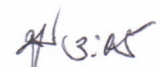
Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
OCT 31 2018



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


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¹⁴ SECTION 5. Tax Incentives. — **Inventors, as certified by the Filipino Inventors Society and duly confirmed by the Screening Committee, shall be exempt from payment** of license fees, permit fees and other business taxes in the development of their particular inventions. This is an exception to the taxing power of the local government units. The certification shall state that the manufacture of the invention is made on a commercial scale.

Inventors shall exempt from paying any fees involved in their application for registration of their inventions. (emphasis supplied)

¹⁵ Commissioner of Internal Revenue v. A.D. Guerrero, G.R. No. L-20942, 22 September 1967.

