March 3, 2021

BIR RULING NO. VAT-063-21

Sec. 108 (A), NIRC of 1997, as amended

Vireo Loadworks, Inc.
Unit R, Freemont Arcade, 11 Shaw Boulevard
San Antonio, Pasig City

Attention: *AAA*

Madam :

This refers to your letter dated August 20, 2020 requesting for a value-added tax (VAT) exemption on the services procured by Quezon City Government to help mitigate the spread of COVID-19 in the said city.

It is represented that Quezon City Government procured the services of Vireo Loadworks, Inc. relative to the utilization of the latter's project named Innovative Artificial Intelligence (AI) and Information and Communications Technology (ICT) services in Quezon City. The said system tracks COVID positive, contacts and walk-in symptomatic patients without contact with healthcare workers.

In reply, please be informed that nothing in the Republic Act (RA) No. 11469 otherwise known as *"Bayanihan to Heal as One Act"* grants VAT exemption to local government units or domestic corporations relative to transactions involving ICT services during pandemic. Likewise, the nature of the subject transaction does not warrant the operation of Section 109 of the National Internal Revenue Code (NIRC) of 1997, as amended, that would justify the exemption of VAT.

On the contrary, the agreement between Vireo and the Quezon City Government, falls under Section 108 (A) of the NIRC of 1997, as amended, *viz.*:

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the

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sale or exchange of services, including the use or lease of properties.

***The phrase 'sale or exchange of services' means the performance of all kinds or 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 goods for others, proprietors, operators or keepers of hotels, motels, resthouses, 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 and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; 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. The phrase 'sale or exchange of services' shall likewise include:*

> *(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;*
>
> *(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;*
>
> *(3) The supply of scientific, technical, industrial or commercial knowledge or information;*
>
> *(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);*
>
> *(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;*
>
> *(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;*

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(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time."

Undisputedly, the agreement between the City Government of Quezon City and Vireo Loadworks, Inc. to provide ICT services for _____ Pesos is within the purview of the above-cited provision. Inevitably, the payment of VAT follows.

The rule that tax exemptions are to be construed in *strictissimi juris* against the taxpayer is well settled. Corollary to this rule is the principle that when a taxpayer claims an exemption, he must point to some specific provision of the statute in which that exemption is authorized and must be able to prove that he is entitled to the exemption which the law allows. [1] A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers. [2]

In view of the foregoing, this Office hereby rules to deny your request for VAT exemption due to lack of factual and legal basis.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 173373, July 29, 2013.
2. *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, G.R. No. 195909, September 26, 2012.

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