REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

RA No. 7151; PD No. 1590
BIR Ruling No. 001-03
OT– 083 - 2023
SEP 15 2023

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Attention: **Atty. Maria Celia Fernandez - Estavillo**

Atty. Concepcion Maria P. De Los Santos

Gentlemen:

This refers to your request on behalf of your client, **Cebu Air Inc.** ("**CAI**"), for a confirmatory ruling that petroleum products purchased and imported abroad for use in domestic operations are exempt from payment of all taxes imposed under the National Internal Revenue Code of 1997, as amended ("Tax Code").

CAI is a corporation organized and existing under the laws of the Republic of the Philippines, and a holder of a legislative franchise granted under Republic Act (RA) No. 7151[1] to establish, operate and maintain transport services for the carriage of passengers, mails, goods and property by air, both domestic and international.

On July 20, 1999, the Bureau of Internal Revenue ("BIR") issued BIR Ruling No. 110-99[2] exempting CAI from all taxes for the aviation gas, fuel, oil and other petroleum products purchased and imported abroad used exclusively in its domestic operations. The said exemption is in line with CAI's franchise allowing tax exemption privileges granted to its competitors such as Philippine Airlines, Inc. ("PAL").

On December 20, 2002, the Department of Energy ("DOE") issued a certification stating that "aviation gas, fuel and oil in domestic operation of airline companies are locally available in reasonable quantity, quality and price." As a consequence thereof, the BIR issued BIR Ruling No. 001-03[3] revoking the tax exemption on the importation of petroleum products for domestic operations of airline companies.

[1] An Act Granting Cebu Air, Inc., a Franchise to Establish, Operate and Maintain Transport Services for the Carriage of Passengers, Mail, Goods and Property by Air, Both Domestic and International, with Cebu as its Base.
[2] Dated July 20, 1999
[3] Dated January 29, 2003

Recently, the DOE issued a certification dated March 15, 2023, confirming the insufficiency of domestic oil refining production and encourages petroleum product importation as means to ensure adequate supply.

In view of the recent DOE certification, you are requesting a ruling confirming that the purchase and importation of aviation fuel abroad by CAI for use in its domestic operations are exempt from the payment of taxes.

In reply, ***Section 11 of RA No. 7151*** provides CAI's tax privileges, *viz*:

> *"SEC. 11. Tax Provisions –*
>
> *xxx xxx xxx*
>
> *In the event that any competing individual, partnership or corporation receives and enjoys tax privileges and other favorable terms which tend to place the herein grantee at any disadvantage, then such provisions shall be deemed ipso facto part hereof and shall operate equally in favor of the grantee.*
>
> *xxx xxx xxx"*

Considering the above-quoted equality clause, the tax privileges granted to PAL in ***Section 13 of Presidential Decree No. 1590***[4] may form part of CAI's franchise. The relevant provision of Section 13 reads as follows:

> ***Section 13.***[5] *In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:*
>
> *xxx xxx xxx*
>
> *The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:*
>
> > *2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles,*

[4] An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-Transport Services in the Philippines and Other Countries.

[5] As amended by Section 22 of RA No. 9337. Domestic airlines are now subject to corporate income tax and value-added tax but remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.

supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; (Underscoring ours)

Thus, the tax exemption privileges granted to PAL shall automatically become part of CAI's franchise and shall operate equally in CAI's favor.[6]

However, for importations of petroleum products used in domestic operations to be tax-exempt, the following conditions must be met:

1. The purchases by sale or delivery of aviation gas, fuel and oil, whether refined or in crude forms shall be for the exclusive use in the franchisee's transport and non-transport operations and other activities incidental thereto; and
2. In the case of importations, that they are not locally available in reasonable quantity, quality or price.[7]

In light of the Certification of the DOE dated March 15, 2023, stating that domestic oil refining products are insufficient to satisfy the actual demand, the importations of petroleum products of CAI are exempt from payment of all taxes, provided, however, that such petroleum products shall be for the exclusive use in CAI's transport and non-transport operations and other activities incidental thereto.

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.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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[6] BIR Ruling No. 110-99, dated July 20, 1999
[7] BIR Ruling No. 001-03, dated January 29, 2003