REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Secs. 131, 134 & 141, Tax Code, as amended
BIR Ruling No. 700-19 BIR Ruling No. 40-00
OT- 124 -2022 MAR 31 2022

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House, Rufino Cor. Valero Sts.
Salcedo Village, 1227, Makati City

Attention: **Atty. Benedicta Du-Baladad**
Founding Partner, Chair, and CEO

Gentlemen:

This refers to your letter dated October 14, 2020 requesting on behalf of your client, **SPLASH CORPORATION** (the "Company") for confirmation of your opinion that the importation of denatured alcohol, which is unfit for human consumption, is exempt from excise tax imposed under Section 141 of the National Internal Revenue Code (Tax Code) of 1997, as amended.

Background

1. The Company, with Taxpayer Identification Number (TIN) and office address at the 5th Flr. W Highstreet Bldg., 28th Street corner 11th Avenue, Bonifacio Global City, Taguig City, is a manufacturer of personal care products. Since 2006, it has been an authorized buyer/user of denatured alcohol pursuant to Permit No. issued by the Large Taxpayer Services of the Bureau of Internal Revenue (BIR).

2. The Company purchases denatured ethyl alcohol from domestic sources, which are exempt from excise tax pursuant to Section 134 of the Tax Code, described as follows:

   Description No. 1
   For every 99.5 liters of ethyl alcohol of not less than 180°, there shall be added 0.5 liters (0.5%) of isopropyl alcohol and 1.0 gram (10ppm) of Denatonium Benzoate (Bitrex).

   Description No. 2
   For every 100 liters of ethyl alcohol of not less than 180°, there shall be added 1.5 grams of Denatonium Benzoate (Bitrex).

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3. The Company uses denatured ethyl alcohol as a raw material ingredient in the manufacture of cosmetic and topical solution drug products. This alcohol is further diluted when mixed with water and other diverse additives or ingredients in its finished products without undergoing any process of rectification or distillation. The processes applied in the manufacture of the finished products will not change nor reverse the denaturation of ethyl alcohol maintaining it to be unfit for drinking or human consumption.

4. Due to the limited supply of denatured ethyl alcohol from domestic sources, the Company decided to obtain the same from sources outside the Philippines. One particular source of imported denatured ethyl alcohol (Prime Grade Ethanol SDA BIT 15) is PT Sumber Kita Indah Trading Company of Indonesia[1]. Other foreign sources of denatured ethyl alcohol are also being tapped to act as the Company's alternative suppliers for future importations to be used for purposes similar to that discussed above.

In reply, please be informed that two focal points need to be addressed:

1. Is there a law mandating the tax levied against the Company? Is such levy sanctioned by the Tax Code?

2. Is the taxpayer exempted from paying the tax assessed against it?

Section 141 of the Tax Code of 1997, as amended, provides:

"SEC. 141. Distilled Spirits.[2] — 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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(b) Effective on January 1, 2015

(1) An ad valorem tax equivalent to twenty percent (20%) 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, a specific tax of Twenty pesos (P20.00) per proof liter.

(c) In addition to the ad valorem tax herein imposed, the specific tax rate of Twenty pesos (P20.00) imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2016, through revenue regulations issued by the Secretary of Finance.

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[1] See Quotation from PT Sumber Kita Indah Trading Company attached as Annex "B", Technical Data Sheet attached as Annex "C" and Certificate of Analysis attached as Annex "D"
[2] As amended by RA No. 9334 and RA No. 10351

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This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.

***'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. (Emphasis provided)*

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Denatured alcohol, whether domestic or imported, falls within the definition of spirits as provided under Section 141 of the Tax Code of 1997, as amended. However, when the domestic alcohol falls under the following requisites: (1) the domestic alcohol is not less than 180° proof or 90% absolute alcohol, (2) the same is suitably denatured; and (3) it is rendered unfit for oral intake, no excise tax may be imposed thereon pursuant to Section 134 of the same Code. But the law is silent when it comes to imported alcohol which falls under the above requisites. Hence, Section 141 above should be read with Section 131 (B) of the same Code which states that *"x x x imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles"* and Section 134 which provides that domestic alcohol when suitably denatured and rendered unfit for human consumption is exempt from the excise tax imposed on Distilled Spirits by Section 141 of the Tax Code, to wit:

"SEC. 131. Payment of Excise Taxes on Imported Articles.[3] *–*

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(B) Rate and Basis of the Excise Tax on Imported Articles. – ***Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.*** *"*

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"SEC. 134. Domestic Denatured Alcohol. — ***Domestic alcohol of not less than one hundred eighty degrees (180°) 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*

[3] Amended by RA 9334 and RA 10351

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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." (Emphasis and underscoring supplied.)"

Therefore, domestic alcohol, one hundred eighty (180) proof or more, when suitably denatured and rendered unfit for human intake shall be exempt from excise tax. The exceptions to this exemption are:

1. When such denatured alcohol is to be used for motive power, it shall be taxed under Section 148 (D) of the Tax Code; and

2. When any alcohol previously rendered unfit for oral intake or 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 the Tax Code.

In other words, to be entitled to the excise tax exemption under Section 141, the following requisites must be present:

1) the domestic alcohol is not less than 180° proof or 90% absolute alcohol;
2) the same is suitably denatured; and
3) it is rendered unfit for oral intake.

Section 141 in relation to Section 134 must be simply interpreted in this wise: As a rule, domestic alcohol is subject to excise tax under Section 141. However, when the domestic alcohol falls under the above-stated requisites, no excise tax may be imposed thereon pursuant to Section 134.[4]

In relation to the above provisions, the Commissioner, in BIR Ruling No. 040-00 dated September 13, 2000, involving the imposition of excise tax on the importation of denatured alcohol, had occasion to rule, as follows:

"In reply thereto, please be informed that Section 134 of the Tax Code of 1997 provides that domestic alcohol of not less than one hundred eighty degrees (180) 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 the said Code: . . .

A careful scrutiny of the above-cited section disclosed that only domestic denatured alcohol which are unfit for human consumption shall be exempt from excise tax. However, considering that no provision in Title VI of the said Code

[4] Avon Products Manufacturing, Inc. vs. CIR, G.R. No. 222480, November 7, 2018

> which provides for the rate and basis of excise tax on imported denatured alcohol, this Office is of the opinion as it hereby holds that the same rates and basis of excise taxes applicable to locally manufactured articles, like domestic denatured alcohol in this case, pursuant to Section 131 (B) supra shall be applied. Accordingly, your importation of denatured alcohol which are unfit for oral intake shall be exempt from excise tax. The importation and sale however, of the said denatured alcohol are respectively subject to the 10% VAT under Sections 107(A) and 106(A) of the Tax Code of 1997."

Applying the above ruling and to answer the issues above, it is the opinion of this Office that the Tax Code neither subjects nor exempts the importation of denatured alcohol which is unfit for oral intake. Entrenched in our jurisprudence is the doctrine that a tax cannot be imposed unless it is supported by clear and express language of a statute.[5] This is so because taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares — tax statutes being strictissimi juris against the government.[6] Moreover, exemption from the payment of taxes cannot be implied. Neither can it be claimed unless expressly provided by law.[7] The statute should be construed strictly with due regard to the true policy of its enactment.

In BIR Ruling No. 700-19 dated November 25, 2019, this Office clarified that the distinction and preferential tax treatment on local alcohol versus imported alcohol was removed by Republic Act (RA) No. 10351, otherwise known as the Sin Tax Law, amending among others Section 141 of the Tax Code. Applying Revenue Regulations (RR) No. 17-2012 dated December 21, 2012, as further clarified by Revenue Memorandum Circular (RMC) No. 3-2013, as amended by RMC No. 18-2013, the Commissioner, in order to give meaning and life to the mandate of the law for locally manufactured and imported articles to have the same rates and basis of excise tax in line with the World Trade Organization ruling, allowed Emperador Distillers, Inc. to suitably denature damaged inventory of ethyl alcohol in order to render it unfit for oral intake, and remove the same without pre-payment of the excise tax imposed under Section 141 for sale to buyers/manufacturers engaged in non-liquor business such as producers of rubbing alcohol or producers of personal care products, subject to strict compliance with the current and existing rules and regulations on denaturation and sale of the denatured alcohol.

In the instant case, the following show that Splash's imported alcohol is denatured, hence, unfit for human consumption: (1) the Technical Data Sheet from the Company's supplier, PT Sumber Kita Indah Trading Company, shows that the description of the denatured ethyl alcohol is "Prime grade Ethanol of minimum 94.9% (volume) purity denatured with 15 ppm Denatonium Benzoate (BIT)"; (2) the Certificate of Analysis further shows that the actual ethanol content of the denatured ethyl alcohol is 96.0%; (3) the Company is engaged in the

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[5] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, 295 SCRA 721 [1998]

[6] Province of Bulacan vs. Court of Appeals, 299 SCRA 442 [1998]

[7] Collector vs. Manila Jockey Club, 98 Phil. 670

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manufacture of personal care products, such as cosmetic and topical solution drug products; (4) the Company is not engaged in producing products for drinking or human consumption;[8] (5) the imported denatured alcohol, not less than 90% absolute alcohol, is considered not fit for oral intake; and (6) the Company's manufacturing process does not include the process of rectification or distillation.[9]

In view of all the foregoing, this Office hereby holds that the importation by the Company of denatured ethyl alcohol which is unfit for human consumption, as verified and confirmed by the Bureau, is not subject to excise tax under Title VI of the Tax Code of 1997, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[8] Refer to Certificate on Denatured Ethyl Alcohol Used for Splash Products dated March 30, 2020
[9] Ibid