REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 27(A) of the Tax Code of 1997, as amended
BIR Ruling No. 242-2018,
OT - 2 0 8 - 2 0 2 2

BENITES SALEM BALDONADO LAW
3rd and 5th Floors, GC Corporate Plaza
150 Legaspi St., Legaspi Village,
Makati City

Attention: ATTY. JAM MICHELLE O. ZORILLA, CPA

Gentlemen:

This refers to your request on behalf of your client, M2Cash Corporation ("M2Cash"), on the tax implications of its issuance of electronic gift certificates to its various customers and clients.

M2Cash, with Taxpayer Identification Number (TIN) s a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (SEC) under SEC Company Registration No. hat its primary purpose is to engage in the business of information technology by providing wireless technology and consultation, as well as project implementation services, marketing and sales activity of software, hardware, e-phone cards and other peripheral equipment, on wholesale basis only; and that in line with its purpose, it entered into a business venture with the Bank of the Philippine Islands (BPI) and several vendors functioning as a service provider that operates a system for paperless gift certificates that can be delivered to any email or Philippine mobile number in exchange of products and/or services from various merchants in the Philippines.

It is also represented that BPI Express Credit Cardholders may convert their BPI Rewards Points to M2Cash bCode/s which they can use in any of their partner vendors; that for every BPI Rewards Point that will be converted to M2Cash bCode/s, BPI will pay M2Cash the amount of Php1.00 representing the redemption value of the point; and in the said transaction, M2Cash earns a revenue only through the service fees it receives from BPI for the set-up, maintenance, and use of online platform in connection with converting points.

It is further represented that when a customer wishes to avail of the gift certificates, he/she shall merely present the email or sms with bCode/s for redemption to the vendor; that BPI will give an amount (cost of point) equivalent to the redemption value to M2Cash, as intermediary, and that the same amount of money will be directly paid to the vendor; that if a bCode amounting to Php1,000.00 is used in redeeming a product/service from the partner-vendor, BPI shall provide Php1,000.00 to M2Cash plus service fee; and that the Php1,000.00 shall be directly transferred to the vendor while the service fee shall be considered as part of M2Cash's gross receipt.

In view of all the foregoing representations, you now seek confirmation that the cost of point received by M2Cash for the issuance of electronic gift certificates to the customers is not taxable and only the service fee paid by BPI to M2Cash shall be subjected to the corporate income tax, expanded withholding tax (EWT), and value-added tax (VAT).

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In reply, please be informed as follows:

Income tax and EWT

The value of the electronic gift certificates does not constitute income on the part of the M2Cash but a fund held in trust of the vendor. It serves as a fiduciary of the property for the benefit of the merchant. Section 27(A) of the National Internal Revenue Code (Tax Code) of 1997, as amended, provides that:

> *"SEC. 27. Rates of Income tax on Domestic Corporations. –*
>
> *(A) In General. - Except as otherwise provided in this Code, an income tax rate of twenty-five percent (25%) effective July 1, 2020, is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines.*
>
> *xxx xxx xxx"*

In the case of *Commissioner of Internal Revenue vs. Tour Specialist Inc.*[1] citing the case of *Commissioner of Internal Revenue vs. Manila Jockey Club, Inc.*[2], the Supreme Court declared that:

> *"Gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code".*

In the foregoing case, the Supreme Court affirmed the decision of the Court of Tax Appeals which excluded from the gross receipts of a local travel agency amounts received by the latter from foreign tourist agencies which form part of the package fee paid by the tourists but were intended or earmarked for hotel room accommodations and accordingly paid by the local travel agency to the hotels. In said case, the Court found that the hotel charges paid by the local travel agency were paid out of funds entrusted to it by the foreign tour correspondent agency. As such, the said receipts never belonged to the local travel agency, but only formed sums for payment to the hotels, without any portion thereof being diverted to its own fund.

In the instant case, since the value of the electronic gift certificates does not constitute income on the part of M2Cash but a fund held in trust of the vendor, and, therefore, do not redound to the benefit of M2Cash, said amounts shall not form part of its gross receipts subject to income tax imposed under Section 27(A) of the Tax Code of 1997, as amended.

Wherefore, this Office hereby confirms your opinion that the cost of point received by M2Cash for the issuance of electronic gift certificates to the customers is not taxable as M2Cash merely holds them in trust for the vendor to whom the client will redeem. Accordingly, the same is not subject to EWT.

However, service fees paid to M2Cash by its clients constitute gross income subject to income tax and consequently, to EWT, pursuant to Section 27 (A) of the Tax Code of 1997, as amended.

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[1] G.R. No. 66416 dated March 21, 1990

[2] 108 Phil. 882

VAT

Section 105 of the Tax Code of 1997, as amended, provides that:

> "SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells barters, 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."

VAT is levied on gross income/gross receipts derived from the sale or exchange of goods or services. In this case, since the cost of point received by M2Cash from its clients for the face value of the electronic gift certificates does not fall within the purview of the term gross income/gross receipts and the money received from its clients is not compensation for services rendered but a liability/deposit for reimbursement to the partner-vendor, such amount is not subject to VAT. Thus, M2Cash shall have to issue separate Non-VAT official receipts. On the other hand, service fees being an income on the part of M2Cash is subject to VAT.

Wherefore, this Office hereby confirms your opinion that M2Cash's issuance of electronic gift certificates to clients is not subject to VAT and as such, Non-VAT receipt is proper. However, M2Cash shall be subject to VAT and required to issue VAT official receipts on the amount it receives from its customers/clients for the service fees where electronic gift certificates were utilized for facilitation/admin fee and/or marketing efforts or commission.

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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By:

MARISSA O. CABREROS
Deputy Commissioner
Legal Group
Officer-in-Charge

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