June 23, 2021

BIR RULING NO. VAT-216-21

Sec. 8, RA 8436, as amended by Sec. 12 RA 9369; BIR Ruling No. 016-18

LBC Express, Inc.
Delta Gate, General Aviation Center,
Domestic Road, Pasay City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 27, 2020 requesting for a confirmatory ruling that the services performed by LBC Express, Inc., (LBC) for the Commission on Elections (COMELEC) is not subject to value-added tax (VAT).

Documents submitted disclosed that COMELEC through their Special Bids and Awards Committee (SBAC) procured the services of LBC for the May 13, 2019 National Elections. The contract price amounted to _____ (_____) payable in four (4) payment schedules (Milestone) detailed as follows:

Milestone	%	Total
1st After delivery of the Project Management Plan, Deployment Plan, Tracking and Monitoring System including training of COMELEC personnel involved in the Monitoring and inspection of provincial hubs/sub-hubs	15	
2nd After delivery to Regional Hub/Warehouses	30	
3rd After delivery of all equipment and peripherals for Final Testing and Sealing, and Election Day	25	

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4th After retrieval and reverse Logistics of AES/VRVS Equipment and Transmission Equipment	30	
Total		

According to the service contract, the contract price is inclusive of all taxes, insurance and other fiscal levies. [1] Likewise, the payment thereof shall be subject to deduction and retention of withholding and other deductible taxes in accordance with law. [2]

Prior to the award, COMELEC obtained a BIR Ruling dated October 10, 2018, which exempts it from VAT on its local purchases of goods and services that will be used in the automated national and local elections.

Eventually, LBC billed COMELEC based on the agreed amount corresponding on the table below but received the payments, to wit:

Milestone	Agreed Amount	Amount Paid	Difference (Representing 12% VAT)
1st			
2nd			
3rd			
4th			
Total			

Hence, LBC's request for confirmatory ruling.

In reply, this Office confirms that the COMELEC is exempt from the 12% value-added tax (VAT) on its local purchases of goods and services as well as VAT on its importation of goods that will be used in the automated national and local elections. This is in accordance to Section 12 of Republic Act (R.A.) No. 8346, [3] as amended, [4] *viz.*:

> *"Section 12. Procurement of Equipment and Materials. —*
>
> *To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent, or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties, subject to the accounting and auditing rules and regulations. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability*

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and been successfully used in prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness."

Accordingly, the suppliers/sellers of goods and services to the COMELEC cannot shift or pass on any VAT to COMELEC on the latter's purchases of goods and services [5] that were actually used during the May 13, 2019 automated national and local elections.

It must be emphasized, however, that the exemption of the COMELEC from VAT is limited only to its purchases and/or importation of goods and services enumerated above beginning July 2018 until completion of the post-election activities; provided further, that the aforesaid purchases and/or importation of goods and services will be used in, or directly related to, the conduct of the May 13, 2019 automated elections. [6]

Therefore, COMELEC shall no longer withhold and remit to BIR the five percent (5%) final withholding VAT mandated under Revenue Memorandum Order (RMO) No. 23-2014, by reason of Section 12 of R.A. 8346, as amended by R.A. 9369. Moreover, the operation of Section 4.114 (2) (a) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018, *viz.*:

"Sec. 4114-2. Withholding of VAT on Government Money Payments. — (a) The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services which are subject to the value-added tax imposed in Secs. 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof."

pro hac vice, finds no application to the transaction between COMELEC and LBC due to the exemption granted to the former predicated under R.A. No. 8436, as amended.

Insofar as to who among the parties shall benefit from the savings derived on the grant of tax exemption, this Office is constrained to take cognizance of the matter as it is beyond its powers conferred by law. The parties should sit down together and settle the matter by reviewing the terms of the contract or by submitting the controversy to the authority of the Government Procurement Policy Board (GPPB) for proper adjudication.

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,

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

Footnotes

1. Art. 6.1 of the Service Contract.
2. Art. 6.2 of the Service Contract.
3. An Act Authorizing the Commission on Elections to use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes.
4. Republic Act No. 9369, An Act Amending Republic Act No. 8346.
5. BIR Ruling dated October 10, 2018.
6. *Ibid*.

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