REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

PD No. 1869, as amended by RA No. 9487 & Sec.109 (1) (K), NIRC of 1997, as amended
BIR Ruling No. 1090-18
CT - 238 - 2021
JUL 12 2021

EUN K. ENTERTAINMENT INC.
Agus Road
Marigondon, Lapu-lapu City
Mactan Island, Cebu 6015

Attention: **Ms. Maria Gloria E. Leyson**
President

Gentlemen:

This refers to your letters dated August 22, 2019 and November 11, 2019 requesting for confirmation that as PAGCOR contractee/licensee, Eun K. Entertainment Inc. ("Eun K." or "the Company") shall pay 5% franchise tax on its income from gaming operations in lieu of all taxes [including value-added tax (VAT) and income tax] pursuant to Section 13 (2) (b) of Presidential Decree (PD) No. 1869.

As represented, Eun K. is a 100% Filipino-owned domestic corporation duly registered with the Securities and Exchange Commission (SEC) on November 16, 2011 under SEC Reg. No. CS201130407. Its primary purpose is to engage in, conduct and operate sports, amusement parks and attractions, recreational facilities and similar establishments within or outside the Philippines. The Company's principal place of business is located at Agus Road, Barangay Marigondon, Lapu-lapu City.

On February 12, 2012, the Company entered into an agreement with the Philippine Amusement and Gaming Corporation (PAGCOR) whereby Eun K. as agent/contractee of PAGCOR was granted the authority to conduct "junket gaming operations" together with PAGCOR at Mactan Isla Resort and Spa compound, Lapu-lapu City, for a period of three (3) years.

On August 4, 2015, Eun K. entered into another agreement to still operate the same "junket gaming operations" for another period of three (3) years from October 17, 2015 to October 16, 2018. On August 2, 2018, the Board of Directors of PAGCOR approved the renewal of Eun K.'s authority to conduct the same "junket gaming operations". A Junket Agreement[1] was then made and entered into by and between PAGCOR and Eun K. effective for a period of three (3) years commencing on October 17, 2018. On July 31, 2019, a Certificate of Authority was issued by PAGCOR authorizing Eun K. to conduct Junket operations in its gaming facility located at Agus Road, Marigondon, Lapu-Lapu City, Mactan Island, Cebu, valid until October 16, 2021. Since day one of Eun K.'s "junket gaming operations," the Company has been religiously paying income taxes. As a contractee/licensee of PAGCOR, it is your opinion that Eun K. instead should have paid 5% franchise tax.

In reply, please be informed that Section 13 (2) (b) of PD No. 1869, as amended by Republic Act (RA) No. 9487, provides, viz.:

> *"SEC. 13. Exemptions. —*
>
> *(2) Income and other taxes — (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation, nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.*
>
> *x x x x x x x x x*
>
> *(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.**" (Emphasis and underscoring supplied)*

[1] Acknowledged by Pablo Q. Aloyan, Director of Eun K., on October 15, 2018, and by Andrea D. Domingo, Chairman and Chief Executive Officer of PAGCOR, on October 29, 2018.

In the more recent case of *Prime Investment Korea, Inc. v. Commissioner of Internal Reveneue, CTA EB No. 2129, Januauary 8, 2021*, the Court of Tax Appeal (CTA), citing the decision of the Supreme Court En Banc in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al., G.R. No. 215427, December 10, 2014*, noted that PAGCOR is subject to: (1) the 5% franchise tax on income from its operations conducted under its Franchise (i.e., gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools) in lieu of all taxes; and (2) income tax on income from "other related services" (i.e., income from licensed private casinos, and bingo covered by authorities to operate issued to private operators). The court clarified that under the aforesaid decision, income from junket operations is classified as "other related services" and is subject to corporate income tax and not franchise tax and that since PAGCOR is subject to corporate income tax for other related services, contractees and licensees should also pay the same tax for income from such related services.

With regard to the VAT exemption of Eun K., Section 109 (1) (K) of the National Internal Revenue Code of 1997 (Tax Code), as amended, provides:

> *"**SEC. 109. Exempt Transactions.** — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:*
>
> *x x x x x x x x x*
>
> *(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529; " (Emphasis supplied)*

Premises considered, this Office hereby rules that the income derived by Eun K., an agent/contractee of PAGCOR, from its junket gaming operations is considered as "other related services" subject to corporate income tax and VAT.

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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