REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
QUEZON CITY

Sec. 130, NIRC
BIR Ruling No. M-219-2021
01-252-2022

MAY 27 2022

JUANITA LILET P. ABUEL
Treasurer
PHIL-GOLD PROCESSING & REFINING CORP. ("PGPRC")
FRC Compound, Brgy Puro
Aroroy, Masbate, Philippines

Madam:

This refers to your letter dated April 28, 2022 appealing for clarification on whether FILMINERA RESOURCES CORPORATION ("FILMINERA") is primarily liable to pay the excise tax on the gold/silver dore extracted from FILMINERA'S mine site and that PGPRC is exempted from the payment of the said excise tax upon sufficient documentation that such tax has been paid by FILMINERA. You further seek clarification that FILMINERA, as the holder of the Mineral Production Sharing Agreement (MPSA) and the owner of the mining claim is the party required to secure an excise taxpayer's removal declaration (ETRD or BIR Form No. 2299), which shall cover all removals from its mine site.

As alleged, FILMINERA is the holder of several MPSAs with the Philippine government and other mining claims to explore and mine gold, silver and other minerals within the contracted area in Masbate. As the MPSA holder and owner of the mining claim, FILMINERA has been paying excise tax on the gold/silver dore, in accordance with Section 130 of the National Internal Revenue Code of 1997, as amended ("Tax Code") and Revenue Regulations (RR) No. 13-94[1], which is based on the actual market value of the gross output thereof at the time of removal from the locality pursuant to Section 151 of the Tax code.

As represented, PGPRC, a domestic corporation is engaged in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources. It entered into an Ore Sales and Purchase Agreement ("Agreement") with FILIMINERA under which FILIMINERA will exclusively supply to the PGPRC ores containing gold/silver. On December 14, 2021, the Bureau of Internal Revenue (BIR) issued a ruling stating that:

> "Clearly, the aforesaid circumstances justify the need for presentation of concrete proof of the actual payment of excise tax on the gold/silver dore prior to each exportation. For, if PGPRC cannot provide proof of such actual payment of excise tax, then, we take the view that it is liable for such excise tax as possessor of the gold/silver dore, pursuant to the last sentence of Section 130(A)(1) of the Tax Code.

[1] Revenue Regulations Governing the Imposition of Excise Tax on Minerals and Mineral Products.

As claimed, since the issuance of the ruling, PGPRC has continued to successfully obtain Permits to Export from the Excise Large Taxpayers Field Operations Division (ELTFOD) supported by, among others:

1. ETRD executed by FILMINERA, as entity primarily liable to pay excise tax;

2. Certification from Chief, Large Taxpayers-document Processing & Quality Assurance Division (LTDPQAD) of FILMINERA's current excise tax payments; and

3. Copy of Surety Bond to guarantee excise tax obligation of FILMINERA as required under Section 160 of the Tax Code.

On April 8, 2022, however, it is further claimed that the ETRD of FILMINERA was not accepted as a support for PGPRC's Permit to Export application, and PGPRC was required instead to execute its own ETRD.

It is PGPRC's position that:

1. FILMINERA, as owner of the mining claim, is primarily liable to pay excise taxes, and is the proper filer of the ETRD;

2. Per ruling obtained, PGPRC may be exempted from the payment of excise tax, provided it is able to provide documentation that FILMINERA actually paid for the excise taxes. Copies of the Certification from the LTDPQAD and the Surety bond are sufficient proof of FILMINERA's actual payment of the excise tax and guarantee of payment of its excise tax obligations.

In reply, the reason/ground to justify FILMINERA's payment of excise tax, and for PGPRC's direct non-payment of excise tax, despite PGPRC being the owner of the product gold/silver dore being exported, is in Section 130 of the Tax Code itself, which indicates who exactly are liable for the excise tax and when the tax should be filed and paid, *viz.*:

> "SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products* -
>
> *(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* -
>
> *(1) Persons Liable to File a Return.*- Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: *Provided*, however, That in the case of indigenous petroleum, natural gas or liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, **while the excise tax on EXPORTED PRODUCTS shall be paid by the owner, lessee, concessionaire or operator of the MINING CLAIM**.

Should domestic products be removed from the place of production without the payment of the tax, the owner or **person having possession** thereof shall be liable for the tax due thereon.

(2) Time for Filing of Return and Payment of the Tax. - Unless otherwise specifically allowed, the **return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: Provided, That the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148 and 151(A)(4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, before removal from the place of production of such products from January 1, 1999 and thereafter: Provided, further, That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable **upon removal of such products FROM THE LOCALITY WHERE MINED OR EXTRACTED**, but with respect to the **excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed** subject to such conditions as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or nonmetallic, the excise tax due thereon shall be paid before their removal from customs custody.

(3) Place of Filing of Return and Payment of the Tax. - x x x.

(4) Exceptions. - The Secretary of Finance, upon recommendation of the Commissioner may, by rules and regulations, prescribe:

(a) The time for filing the return at intervals other than the time prescribed in the preceding paragraphs for a particular class or classes of taxpayers after considering factors such as volume of removals, adequate measures of security and such other relevant information required to be submitted under the pertinent provisions of this Code; and

(b) The manner and time of payment of excise taxes other than as herein prescribed, under a tax prepayment, advance deposit or similar schemes. **In the case of locally produced or extracted minerals and mineral products or quarry resources where the mine site or place of extraction is not the same as the place of processing or production, the return shall be filed with and the tax paid to the Revenue District Office having jurisdiction over the locality where the same are mined, extracted or quarried**: Provided, however, That for metallic minerals processed abroad, the return shall be filed and the tax due thereon paid to the Revenue District Office having jurisdiction over the locality where the same are mined, extracted or quarried.

x x x." (Emphasis and underscoring supplied)

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Section 130(A)(1) of the Tax Code specifically states that excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim. As represented by PGPRC, and indicated in the Agreement between PGPRC and FILMINERA, it is FILMINERA that owns the mining claim. Because it is FILMINERA and not PGPRC that owns the mining claim, it is FILMINERA then that is statutorily liable for the excise tax.

Section 130(A)(2) of the Tax Code then states that with respect to the excise tax on extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed from the locality where mined or extracted.

Based on PGPRC's earlier representations, the extraction facility of FILMINERA in the Masbate area is in the same locality as the production area of PGPRC. Thus, the excise tax becomes due upon removal of the product from the Masbate locality. In this instant case, the product being removed from the locality is not the ore, but the refined gold/silver dore, so the excise tax shall be based on the gold/silver dore.

PGPRC's earlier representations specified that the Agreement between PGPRC and FILMINERA states in Section 2.4, in relation to Section 3.2, that the ore is deemed sold to and purchased by PGPRC at the time it is delivered at the Pit (defined in the Agreement as the designated area in the mine where ore will be delivered by FILMINERA). Thus, PGPRC takes ownership of the ore upon delivery. Without question, after the ore is refined to become dore, PGPRC is also the owner of the dore. However, PGPRC, as a refiner of gold/silver ore and a producer of gold/silver dore, does not automatically make it directly liable for the excise taxes on the gold/silver dore exported. Since PGPRC is not the owner of the mining claim, then PGPRC should not be held directly liable for the excise tax on the gold/silver dore being exported, as it is the owner of the mining claim or FILMINERA that is held directly liable for the excise tax of the gold/silver dore exported. PGPRC's earlier representations state that FILMINERA bills PGPRC the excise tax FILMINERA paid as part of their cost-plus arrangement; and PGPRC pays FILMINERA the excise tax that FILMINERA paid which is built into FILMINERA's cost of goods.

Although what FILMINERA extracted was ore, FILMINERA is liable for the excise tax on the refined gold/silver dore, not only because it is the product that was removed from the locality where mined or extracted (the ore was already transformed to dore and it is the gold/silver dore that was removed from the locality), but also because it is the gold/silver dore product that is being exported, of which FILMINERA is statutorily liable for the excise tax, pursuant to Section 130(A)(1) of the Tax Code.

The gold/silver component in the ore is still the same gold/silver component in the dore. The only difference between the ore and the dore is that all the other extraneous materials such as non metallic minerals that were present in the ore are not any more present in the dore. The gold silver components, however, remain the same.

To conclude, granting that the instant case is not the same as the usual end-to-end process of other companies in the mining industry, where one company extracts gold ore and the same company processes it to become gold/silver dore or concentrated metallic minerals, and that same company eventually exports the product as owner, the issue remains the same.

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and the issue is – whether the excise tax on the product that was removed from the locality has been paid.

Based on the foregoing, it is the Bureau's considered view that FILMINERA, as the owner of the mining claim, is primarily liable to pay the excise tax on the gold/silver dore extracted from FILMINERA's mine site and removed from the locality; and that PGPRC is exempted from the payment of the said excise tax upon sufficient documentary proof that such tax has been paid by FILMINERA. FILMINERA, as the owner of the mining claim, is the party required to secure an excise taxpayer's removal declaration which shall cover all removals from FILMINERA's mine site related to the gold/silver dore exported.

Please be guided accordingly.

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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