September 11, 2018

BIR RULING NO. 1204-18

RA 9367; 000-00

AAA

ETHANOL PRODUCERS ASSOCIATION OF THE PHILIPPINES

BBB

CENTER FOR ALCOHOL RESEARCH AND DEVELOPMENT

Gentlemen :

This refers to your letter dated January 31, 2018, addressed to Secretary Alfonso C. Cusi of the Department of Energy (DOE) and subsequently endorsed to this Office on February 23, 2018, seeking for a ruling clarifying whether the rate imposed by the Biofuels Act (R.A. No. 9367) for bioethanol remains in effect despite the passage of Republic Act No. 10963 otherwise known as the "Tax Reform for Acceleration and Inclusion Law" (TRAIN Law).

It is your position that the zero (0) per liter tax rate imposed by the Biofuels Act for bioethanol remains in effect despite the passage of the TRAIN Law based on the following:

1. Section 86 of the TRAIN Law did not include the Biofuels Act in the list of special laws that it effectively repealed;

2. The TRAIN Law did not impliedly repeal the Biofuels Act; and

3. The Biofuels Act created an exception from the coverage of Section 148 (d) of the National Internal Revenue Code of 1997, as amended (NIRC), insofar as biofuels, including bioethanol, are concerned.

In reply, please be informed as follows:

The TRAIN Law did not expressly

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repeal the Biofuels Act of 2006.

The Biofuels Act is a special law specifically governing the development and use of indigenous renewable energy to reduce dependence on imported oil; reduce toxic emissions; and ensure the availability of alternative and renewable clean energy without causing any harm to the natural ecosystem, biodiversity and food reserves of the country.

A special law is not regarded as having been amended or repealed by a general law unless the intent to repeal or alter is manifest. *Generalia specialibus non derogant.* In the event harmony in two laws is impossible, the specific provision controls unless the statute, considered in its entirety, indicates a contrary intention upon the part of the legislature *(Villegas vs. Subido, G.R. No. L-31711, September 30, 1971).* A special law may only be repealed expressly by another special law. (*CIR vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009)

Section 86 of the TRAIN Law lists the special laws repealed by the TRAIN Law and the Biofuels Act is not among those repealed. Had Congress intended to repeal Section 6 (a) of the Biofuels Act, it would have inserted a **"notwithstanding any incentives granted in any special law"** clause similar to that of Section 48 of the TRAIN Law amending Section 151 of the National Internal Revenue Code of 1997, as amended, (NIRC) which imposes excise tax on domestic or imported coal and coke.

Congress intended that the Biofuels Act be an exception to Section 148 (d), NIRC.

It is a fundamental principle in statutory construction that the intention of the Legislature must be ascertained and given effect. A statute's clauses and phrases must not be taken separately but in its relation to the statute's totality. Each statute must, in fact, be construed as to "harmonize it with the pre-existing body of laws." *(Commissioner of Customs vs. ESSO Standard Eastern, Inc., L-28329, August 7, 1975, 66 SCRA 113)* A closer look at the Biofuels Act would reveal the intent to use biofuels for transport to reduce the country's dependence on imported fossil fuels and to mitigate greenhouse gas emissions.

The statutory construction rule is that when the legislature enacts a provision, it is understood that it is aware of previous statutes relating to the same subject matter and that in the absence of any express repeal or amendment therein, the new provision should be deemed enacted pursuant to the legislative policy embodied in the prior statutes. *(Legaspi vs. Executive Secretary, L-36153, November 28, 1975, 68 SCRA 253)* When the TRAIN Law was passed, Congress was aware of Section 19 of the Biofuels Act which provides:

> *"SEC. 19. Repealing Clause. — The provisions of Section 148 (d) of R.A. No. 8424 otherwise known as the Tax Reform Act of 1997, and all other laws, presidential*

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decrees or issuances, executive orders, presidential proclamations, rules and regulations or parts thereof inconsistent with the provisions of this Act, are hereby repealed, modified or amended accordingly."

The TRAIN Law amended Section 148 (d) of the NIRC on denatured alcohol to be used for motive power as to the rate **only** of the excise tax by increasing it from P0.05 per liter to P8.00 per liter. Furthermore, it imposed either income, value-added or excise taxes and repealed more than fifty (50) statutes granting tax exemptions. The Biofuels Act was spared from the repeal which shows that Congress intended to retain the tax incentives stated under Section 6 (a) of the Biofuels Act.

In view of the foregoing, the rate imposed by the Biofuels Act for bioethanol remains in effect despite the passage of the TRAIN Law.

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,

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

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