REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Sec. 129, 151(B)(2) & (B)(3), TC	000-00	#018-2018

Person to Contact: Chief, Law & Legislative Division
Tel Nos. 926-55-36/927-09-63

Date: January 17, 2018

FACTORAN AND ASSOCIATES
7/F Montepino Bldg., Adelantado cor. Gamboa Sts.
Legaspi Village, 1229 Makati City

Attention: **Atty. Fulgencio S. Factoran, Jr.**

Gentlemen:

This refers to your letter dated June 14, 2017 requesting on behalf of your client, CORAL BAY NICKEL CORPORATION ("CBNC") for a ruling that the nickel and cobalt sulfide (mixed sulfide), manufactured through High Pressure Acid Leach (HPAL) process is not a mineral or mineral product as defined in Section 151 of the Tax Code of 1997, as amended, and as such is not subject to excise tax.

As represented, CBNC is a corporation organized in 2002 under the laws of the Republic of the Philippines. CBNC's principal office is at Barangay Rio Tuba, Bataraza, Palawan. It is primarily engaged in manufacturing and in downstream mineral processing. CBNC is the owner and operator of the only HPAL Plant in the Philippines situated in Palawan.

On the other hand, Rio Tuba Nickel Mining Corporation (RTNMC) is a Philippine corporation organized in 1969. It is engaged in mining.

RTNMC supplies CBNC with mineral ores. It settles the excise tax due on low-grade limonite ore before the same is supplied to CBNC. CBNC then uses HPAL process to produce mixed nickel and cobalt (mixed sulfide) sulfide from naturally occurring oxides of nickel and cobalt found in low-grade limonite (nickel) ores. The mineral ores undergo the HPAL process for the purpose of producing products of higher value by means of CBNC's proprietary technology.

In support of your request, you submitted a letter from the Acting Director, Mines and Geosciences Bureau, together with a copy of the General Process Flow Diagram of HPAL process confirming that high pressure acid leaching and sulfurization processes change the composition of the limonite ore to produce precipitated mixed nickel-cobalt sulfide.

In reply, please be informed that Section 151 (B) (2) and (3) of the Tax Code of 1997, as amended (Tax Code), and as implemented by Revenue Regulations No. 13-94, defines "minerals" and "mineral products" as follows:

"(B) For purposes of this Section, the term –

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*(2) **'Minerals'** shall mean all naturally occurring inorganic substances (found in nature) whether in solid, liquid, gaseous or any intermediate state.*

*(3) **'Mineral products'** shall mean things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing by the lessee, concessionaire or owner of mineral lands.*

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In relation thereto, Section 129, supra provides:

*"**SEC. 129. Goods Subject to Excise Taxes.** – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.*

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax' "

Pursuant to the above-cited provisions, minerals and mineral products are subject to excise tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation in accordance with the schedule provided in Section 151 (A) (3) of the Tax Code.

Based on the laboratory analysis conducted by the BIR Laboratory Section and as per Memorandum dated September 14, 2012 of the Chief, BIR Laboratory Section, Excise Taxpayers Regulatory Division, it was ascertained that HPAL process brings about a chemical change from naturally occurring oxides of nickel and cobalt to mixed nickel-cobalt sulfide. Hence, mixed nickel-cobalt sulfide (mixed sulfide) manufactured through HPAL process does not qualify as mineral or mineral product as defined in Section 151 of the Tax Code since its main ingredient, limonite ore, has undergone chemical change. Neither does mixed nickel-cobalt sulfide qualify as mineral concentrate as defined in Section 3 of Revenue Regulations No. 13-94 since mineral concentrate is a product obtained by mechanical means, without altering the original chemical composition of the mineral.

In view of the foregoing, since mixed nickel-cobalt sulfide (mixed sulfide) is not a mineral or mineral product as defined in Section 151 of the Tax Code, it is not subject to excise tax imposed in Section 129 of the same Code.

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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