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

Section 282 (A) of the National Internal Revenue Code of 1997, as amended
BIR Ruling No. 178-2014
#202-2017
4-20-2017

MS. ANGELITA M. MASCARDO AND
MS. MIRRIAM C. CLARO
No. 135, Zone 3,
Bagumbayan Norte,
Naga City

Mesdames:

This refers to your follow-up letter dated May 24, 2016 relative to your informer's reward in relation to the internal revenue tax case of PHILEX MINING CORPORATION under Confidential Information No. 44-97 dated March 08, 1997.

As stated in your letter, you should have received the reward earlier in 2002 but you were not able to make a follow-up due to some unavoidable circumstances.

In reply, please be informed that Section 282 (A) of the National Internal Revenue Code of 1997, as amended, provides that:

> *"SEC. 282. Informer's Reward to Persons Instrumental in the Discovery of Violations of the National Internal Revenue Code and in the Discovery and Seizure of Smuggled Goods. –*
>
> *(A) For Violations of the National Internal Revenue Code.- Any person, except an internal revenue official or employee, or other public official or employee, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue,* ***leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof****, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty, shall be rewarded in a sum equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (P1,000,000) per case, whichever is lower. The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and collected from the offender: Provided, That should no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward: Provided, further, That the information mentioned herein shall not refer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies, agents or examiners, or the Secretary of Finance or any of his deputies or agents: Provided, finally, That the reward provided herein shall be paid under rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner."* (Emphasis Supplied)

Under the above quoted provision, the determining factor to entitle an informer to a reward is that he gave information "leading to the discovery of frauds" by internal revenue officers. Further, in order for the above section to be operative, it is sufficient that the person

or entity concerned is subject to, and violated revenue laws, and the informer's report thereon resulted in the recovery of revenues. (Commissioner of Internal Revenue vs. Commission on Audit, G.R. No. 101976, January 29, 1993) *(BIR Ruling No. 178-2014 dated June 09, 2014)*

In the Memorandum for the former Commissioner of Internal Revenue, Rene G. Bañez, dated March 30, 2001, it states that PHILEX MINING CORPORATION was already investigated for 1994 all internal revenue taxes by Revenue Officer Buenaventura Raguero and Supervisor Manuel Sayson of Revenue District Office No. 43, Pasig City, pursuant to RDO Letter of Authority No. 68803 dated August 18, 1995 duly signed by Revenue District Officer Aguinaldo Miravalles. Under the said Memorandum, the scope of the investigation and findings is hereby cited in toto, to wit:

> *"The main issue of the audit primarily focuses on the alleged padded construction cost of the Kias road rehabilitation undertaken by Philex. The undersigned were confined in the verification of the available documents based on the aforementioned circumstances. Careful analysis and evaluation of these documents showed substantial compliance of Philex Mining Corporation particularly the incentives claimed as tax credit in payment of national taxes. The Board of Investment, in its Management Committee meeting November 15, 1991 formally approved Philex's availment of incentives provided under PD 1789 Article 45 (g). It was ascertained by the undersigned that Philex complied necessary requirements and was issued clearance by the concerned agencies of the government for every incentive claimed.*
>
> *Taking into account the aforementioned situation and the result of evaluation of the document submitted by the subject taxpayer, it appears that the transactions of PHILEX do not involved any fraud. The allegation that PHILEX padded the construction cost of Kias road rehabilitation has no factual basis since the documents presented by the informer failed to substantiate such allegation. The increase of the original* ***projected rehabilitation cost*** *of P84 million to 210 million as approved by the Management Committee of the BOI was in consideration of the rework done due to numerous typhoons that required the company to repeatedly reconstruct several critical areas, full concrete paving of some critical areas, additional construction works and inflation factor. The BOI in its letter dated May 25, 1995 duly signed by the Executive Director advised the Bureau of Internal Revenue, Attn. Mr. Dominador L. Galura, Chief, Industry Audit Division, that the final budget of the road was increased to P210, 243 779.52 relative to the incentive provided under Article 45 (g) of P.D. 1789. The approval was based on the endorsements from both the provincial government of Benguet and the DPWH of the Cordillera Administrative Region for the change in specification and cost estimates. The allegation that the cost incurred was padded lacks factual basis since the cost increase was verified by SGV & Co. as per its audit report of January 15, 1999, which confirm the rehabilitation cost of Kias road of P208, 554, 444. The additional cost of P176, 831 784.86 was attested by the DPWH in its Certificate of Inspection and Acceptance. Likewise, the allegation that subject taxpayer has been shipping high-grade copper and gold concentrate abroad that pertains to 1997 is not actually covered by the authority to investigate. The allegation that increase of the cost of Kias road rehabilitation was to unrelated expenditures lacks evidence and has no legal basis to warrant fraud case. Fraud is never imputed and the courts never sustain findings of fraud upon circumstances, which, at most, create only suspicion. (Yutivo Sons Hardware Co. vs. Court of Tax Appeals, L-13203, Jan. 28, 1961, 1 SCRA 160). All incentives claimed by PHILEX had passed the requirements set by the BOI and duly approved by all authorized agencies of the government.*

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Nonetheless, the informers failed to show concrete evidence that would justify their allegation up to this time of reporting. Fraud cannot be presumed and it must be established by clear and sufficient evidence (Id.; Carreon vs Agcaoili, L-11156, February 23, 1961, 1 SCRA 521). The taxpayer cannot be compelled to present its records and books of accounts since investigation for those years covered by the authority of the undersigned was already investigated and the rest has prescribed pursuant to Section 203, where the period of Limitation Upon Assessment and Collection has already prescribed since no element of fraud was detected" (Underscoring Supplied)

In view of the foregoing, we regret to inform you that your request for informer's reward cannot be granted for lack of factual and legal basis.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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