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

RA No. 1169, as amended
BIR Ruling No. 310-2011
#213-2017 4-26-2017

ERLINDA F. LOPEZ

Dear Ms. Lopez,

This refers to your letter dated October 1, 2014 requesting clarification and exemption from the three percent (3%) percentage tax imposed on your five percent (5%) share from the gross sales of lotto tickets as Lotto Agent for Philippine Charity Sweepstakes Office (PCSO).

It is represented that PCSO is created under Republic Act No. (RA) 1169, as amended by Presidential Decree (PD) No. 1157, to raise and provide funds through holding and conducting charity sweepstakes races, lotteries and other similar activities; that the funds derived therefrom will promote the health programs, medical assistance and services and other charities of national character enunciated by the government; that in order to fully attain the objectives and undertaking, as mandated, the PCSO is likewise exempted from all taxes in conducting all its charity sweepstakes races, lotteries and other similar activities and the sale of tickets thereof under Section 4 of R.A. 1169, as amended; that Ms. Erlinda Lopez, with an outlet located at 530 Lakandula St., Tondo, Manila, is a duly authorized PCSO lottery agent per PCSO Certification dated August 28, 2014; and that since PCSO is exempt from all taxes, the sale of lottery tickets by Ms. Erlinda Lopez for and in behalf of PCSO is likewise exempt from taxes.

In reply, please be informed that there are two (2) laws that grant tax exemption to PCSO. We refer to Republic Act (RA) No. 1169, as amended, which exempts from all taxes the horse races and sales of sweepstakes tickets, and RA No. 8424 or the National Internal Revenue Code of 1997 (NIRC of 1997), as amended, which exempts PCSO from corporate income tax. But the fact that the aforesaid laws specifically identify the tax-exempt items or transactions only means that PCSO is not exempt from any and all kinds of taxes. *Expressio unius est exclusion alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. Indeed, except for the horse races, sales of sweepstakes tickets and corporate income tax, PCSO is liable for other internal revenue taxes, such as Documentary Stamp Tax on the sale of lotto tickets and other tickets for other games. (*BIR Ruling No. 310-2011* dated August 22, 2011)

Anent the taxability of an authorized PCSO lottery agent, please be informed that in the case of "Andres C. Rivas, et al. vs. Hon. Alvin Garcia, in his capacity as City Mayor of Cebu City, Hon. Renato V. Osmeña, in his capacity as Vice-Mayor of Cebu City and Philippine Charity Sweepstakes Office, (CA-G.R. SP No. 41878 dated February 13, 1998)", the Court held, thus:

> *"Whether the Petitioners, are government employees or not, and whether they have been contracted by the PCSO under separate contracts, are irrelevant. What is primordial is that the Petitioners are mere agents of the PCSO, performing functions vested in the PCSO, namely,*

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> *the sale of lotto tickets. The proceeds of the sales constitute government funds which they are bound to account to the PCSO. In fine, the nature of the business or activity the Petitioners are engaged in, which is the sale of lotto tickets, is expressly exempted from regulation and control, and all forms of taxation, by local government units."*

The Court of Appeals, further ruled, that:

> *"Where the exemption is clear and mandatory, the Courts, if we may borrow the language of the New York State Supreme Court, cannot 'insert qualifying clauses or add conditions not contained in the act' (Williams, Institutional versus City of New York, 89 New York Supplement, page 304). Conditional statutory exemptions are to be given a reasonable, natural and practical interpretation to effectuate the purpose for which the exemption is granted* (idem, supra, page 645)."

Since Ms. Erlinda Lopez, in the sale of the lottery tickets and collecting the proceeds thereof for remittance to PCSO, is merely acting in representation and on behalf of PCSO, i.e. PCSO being the principal and Ms. Erlinda Lopez is the agent, the power and authority granted to Ms. Erlinda Lopez to sell lottery tickets carries with it the privileges and obligations inherent in the personality of PCSO specifically pertaining to tax exemption as stated in Section 4 of R.A. 1169. Since the sale of lottery tickets by PCSO is exempt from all taxes, including the percentage tax, the sale of the lottery tickets by Ms. Erlinda Lopez is likewise exempt from the percentage tax.

It must be emphasized, however, that any amount earned as commission by PCSO agents, such as Ms. Erlinda Lopez, from sale of lottery tickets shall be subject to income tax, as well as to value-added tax or percentage tax, as the case may be, since said commission is no longer income by the PCSO but by the agent who is taxable under the pertinent provisions of the NIRC of 1997, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall be disclosed 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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