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

Bureau of Internal Revenue Ruling

Section 27(A) of the National Internal Revenue Code of 1997, as amended		#242-2018

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

Date: February 21, 2018

G. PAGASPAS PARTNERS & CO. CPAs
Unit 2309 Cityland Herrera Tower
V.A Rufino St., Cor. Ayala Avenue
Makati City

Attention: GARRY S. PAGASPAS, CPA
Partner

Gentlemen:

This refers to your letter dated August 03, 2016, requesting for a ruling on behalf of your client, Giftaway, Inc., on the tax implications of its sale of Electronic Gift Certificates to its customers and clients and the eventual use of the same for the acquisition of goods and services with its partner establishments.

Background:

Giftaway, Inc. (the "Company"), with Tax Identification Number (TIN) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (SEC) under SEC Registration No. dated June 27, 2012 based on the following primary purpose, to wit:

> *"To provide linkages among the consumers/buyers and product/service providers through modern interactive technology mainly by way of electronic codes to enable each group to realize mutual benefits such as but not limited to increased sales and volume-based profits for product/service providers and bulk discounts and after sales services for consumers/buyers and to do such other acts as may be necessary, incidental or conducive to the aforesaid primary objective."*

It is likewise registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. dated July 19, 2012.

The Company is a service provider that operates a platform for paperless gift cards, also known as Electronic Gift Cards ("eGC" for brevity) and runs digital card eGC storefronts for various "Merchants" in the Philippines which involves the following features:

a. The Company develops, operates, and manages the eGC system for the Merchant, collectively known as the digital gift card program. The eGCs of the Merchant will be sold through the "Branded Store" and "Gift Network".

The Branded Store is an online store that exclusively sells eGCs of the Merchant and enables the Merchant to sell eGCs online through the Merchant's website or Facebook page. In addition to having a Branded Store for the Merchant, Giftaway, Inc. operates a Gift Network as an extended sales network that sells and utilizes eGCs to tap different channels.

b. The Company identifies Merchants to be accredited from requests made by a Client and/or through its own initiative to identify key Merchants that are anticipated to be desirable to the client.

The Company and Merchant enters into a "Giftaway Service Agreement" for the eGC.

c. Upon purchase of an eGC by a client, the client or the designated recipient of the eGC shall be notified with an eGC code via electronic mail, short messaging service, and/or mobile application.

BIR Registered official receipt stamped "VAT-exempt" for the face value of the eGC collected from the Client is being issued for the purpose;

d. eGC code does not have an expiration date unless sold at a discount or requested by the client and could then be used by the client or representative in acquiring goods and services from the various accredited Merchants of the Company through the process of redemption with the Merchant's store location where the Merchant will verify online the validity of the eGC code as payment of the purchase of the client or representative of the Merchant's goods or services.

For such sale of goods and services through redemption of eGCs, the Merchant will issue corresponding VAT-official receipt to the eGC client or authorized representative and would account corresponding taxes thereto.

e. For and in consideration of the services provided by the Company, the Company bills the Merchant service fees agreed upon during the remittance of the eGC amount from the past week/month or coverage period. This service fee is inclusive of VAT and covers the cost of development, maintenance, payment processing, fraud protection, and training necessary to execute the Program.

f. BIR registered official receipt for the service fees received from the client, should there be any and/or should they have availed other services/items availed that are not the eGC.

In the operation of such eGC platform, the Company earns revenue by charging service fees to the Merchants and not the issuance of eGCs to the clients. A typical example of its transaction with a client would be as follows:

Value of the eGC	
Service fee	(Company's income)
VAT	(VAT on income)
Amount to be remitted to Merchant	
Amount to be collected from client	

In view of the foregoing representations, you now request for confirmation of the following:

1. The proceeds from issuances of eGC from Clients to the Company is not a taxable income as the company merely holds them in trust for and in behalf of the Merchant to whom the Client will redeem. Accordingly, the same is not subject to expanded withholding taxes;

2. The Company's issuance of eGCs to clients is exempt from Value-added Tax (VAT) and as such, an acknowledgement receipt or non-VAT receipt or VAT-exempt receipt is proper, not being a sale of good or service contemplated under the existing laws, rules, and regulations on VAT; and

3. The Company shall be subject to 12% VAT and required to issue VAT official receipts on the amount it receives from the merchant stores for the service fees where eGCs were utilized for facilitation/admin fee and/or marketing efforts or commission.

In reply, please be informed as follows:

Income tax and withholding tax

The value of the eGC does not constitute income on the part of the Company but a fund held in trust for reimbursing accredited Merchants. Section 27(A) of the National Internal Revenue Code of 1997, as amended, provides that:

"SEC. 27. Rates of Income tax on Domestic Corporations. –

(A) In General. - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).

xxx xxx xxx"

In the case of *Commissioner of Internal Revenue vs. Tour Specialist Inc.*[1] citing the case of *Commissioner of Internal Revenue vs. Manila Jockey Club, Inc.*[2], the Supreme Court declared that:

"Gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code".

In the foregoing case, the Supreme Court affirmed the decision of the Court of Tax Appeals which excluded from the gross receipts of a local travel agency amounts received by the latter from foreign tourist agencies which form part of the package fee paid by the tourists but were intended or earmarked for hotel room accommodations and accordingly paid by the local travel agency to the hotels. In said case, the Court found that the hotel charges paid by the local travel agency were paid out of funds entrusted to it by the foreign tour correspondent agency. As such, the said receipts never belonged to the local travel agency, but only formed sums for payment to the hotels, without any portion thereof being diverted to its own fund.

In the instant case, since the value of the eGC does not constitute income on the part of the Company but a fund held in trust for reimbursing accredited Merchants, and, therefore, do

[1] G.R. No. 66416 dated March 21, 1990
[2] 108 Phil. 882

not redound to the benefit of the Company, said amounts shall not form part of its gross receipts subject to income tax imposed under Section 27(A) of the National Internal Revenue Code of 1997, as amended.

Wherefore, this Office hereby confirms your opinion that the proceeds from the issuance of eGC from Clients to the Company is not a taxable income as the Company merely holds them in trust for and in behalf of the Merchant to whom the Client will redeem. Accordingly, the same is not subject to expanded withholding taxes.

However, service fees paid to the Company by its clients constitute gross income subject to income tax and consequently, to expanded withholding tax, pursuant to Section 27 (A) of the National Internal Revenue Code of 1997, as amended.

Value-added tax (VAT)

Since the amount received by the Company from its clients for the face value of the eGC does not fall within the purview of the term gross income and the money received by the Company from its clients is not compensation for services rendered by the Company but a liability/deposit for reimbursement to the participating establishments, such amount is not subject to VAT. Thus, the Company shall have to issue separate Non-VAT official receipts. On the other hand, service fees being an income on the part of the Company is subject to VAT.

Wherefore, this Office hereby confirms your opinion that the Company's issuance of eGCs to clients is not subject to VAT and as such, Non-VAT receipt is proper. However, the Company shall be subject to 12% VAT and required to issue VAT official receipts on the amount it receives from the merchant stores for the service fees where eGCs were utilized for facilitation/admin fee and/or marketing efforts or commission.

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