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

| | | |
|---|---|---|
| Sec. 39 & 106(B)(1) | 000-00 | VAT - 0331 - 2020 |

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

Date: JUN 16 2020

**Reyes Tacandong & Co.**
Citibank Tower
8741 Paseo de Roxas
Makati City 1226

Attention: **Atty. Rafael Vinzon**
Tax Services

Gentlemen:

This refers to your letter dated April 11, 2017 requesting on behalf of your client, **Total Philippines Corporation** for confirmation of your opinion that:

1) Pursuant to the Deed of Sale executed between Total Philippines Corporation with Filoil Energy Company, the sale of the service gas stations is subject to value-added tax, it being a transaction deemed sale under Section 106 (B)(1) of the National Internal Revenue Code of 1997, as amended; and

2) The assignment of goodwill is not subject to VAT as it is an assignment of a capital asset.

As represented, **Total Philippines Corporation** is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with registered address at 7th Floor, 11th Corporate Center, 11th Avenue corner Triangle Drive, North Bonifacio, Bonifacio Global City, Taguig City.

On July 8, 2016,[1] Total Philippines Corporation and Filoil Energy Company executed a Deed of Absolute Sale covering the following service stations:

| Station Name | Station Address | Market Value in Pesos |
|---|---|---|
| Calasiao, Pangasinan | National Road, Mancup, Calasiao, Pangasinan, (Galaxi-Calasiao) | |
| Malasiqui | Malasiqui, Pangasinan | |
| San Manuel, Pangasinan | San Manuel, Pangasinan | |
| FBT – Abulug | Brgy. Libertad, Abulog, Cagayan | |
| FBT – Buguey | Brgy. Pattao, Buguey, Cagayan | |
| FBT – Solana | Brgy. Lingu, Solana, Cagayan | |
| FBT – Bayombong | Luyang, Bayombong, Nueva Vizcaya | |
| FBT – Solano | Pobalacion North, Solano, Nueva Vizcaya | |
| FBT – Cabatuan | Brgy. Diamantina, Cabatuan, Isabela | |
| FBT – Jones | Brgy. 1, Jones, Isabela | |

[1] Amended on January 18, 2017 to reflect the updated purchase price

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| Station Name | Station Address | Market Value in Pesos |
|---|---|---|
| Balanga – Roman Hi-way | Roman National Highway, Brgy. Tuyo, Balanga, Bataan | |
| CABCABEN | Cabcaben, Mariveles, Bataan | |
| Cabcaben 2 | National Road, Cabcaben, Mariveles, Bataan | |
| FBT – Abucay | Wakas Capitangan Abucay, Bataan | |
| FBT – Bagac | Brgy. Poblacion, Bagac, Bataan | |
| FBT – Limay | P. Enriquez St. cor. National Road, Brgy. Townsite, Limay, Bataan | |
| FBT –Orani | Brgy. Tugatog, Orani, Bataan | |
| FBT –Palihan | Brgy. Palihan, Hermosa, Bataan | |
| FBT – Pilar, Bataan | Brgy. Poblacion, Pilar, Bataan (Alauli) | |
| FBT – Samal | Sta. Lucia, Samal, Bataan | |
| Orani | Brgy. Apollo, Orani, Bataan | |
| General Luis | 3106 Sto. Rosario St., Purok 3, Mapulang Lupa, Valenzuela City | |
| Camarin | Ilang-ilang St., Cor. Magnolia, Camarin, Caloocan City | |
| Sta. Mesa | 4872 Old Sta. Mesa Road, Sta. Mesa, Manila (CityOil-Sta. Mesa) | |
| FBT – San Agustin | Dubduban, San Agustin, Romblon | |
| Brooke's Point | Brooke's Point, Palawan | |
| Culion | Culion, Palawan | |
| FBT – Dumaran | Brgy. Sta. Teresita, Dumaran, Palawan | |
| FBT – Quezon | Quezon, Palawan | |
| FBT – San Vicente | Poblacio, San Vicente, Palawan | |
| FBT –Taytay Abongan | Brgy. Abongan, Taytay, Palawan | |
| FBT – Taytay Rotunda | Poblacion, Taytay, Palawan | |
| Irawan | Purok Pag-Asa, Irawan, Puerto Princesa, Palawan | |
| Puerto Princesa | Brgy. Tiniguiban, Puerto Princesa, Palawan | |
| Sta. Lourdes | Brgy. Sta. Lourdes, Puerto Princesa City, Palawan | |
| Sta. Monica | National Hi-way, Brgy. Sta. Monica, Puerto Princesa City, Palawan | |
| Tiniguiban | National Hi-way, Brgy. Tiniguiban, Puerto Princesa City, Palawan | |
| FBT - Caminawit | Caminawit, Bubog, San Jose, Occidental Mindoro | |
| FBT – Central | Central, San Jose, Occidental Mindoro | |
| FBT – Labangan | Labangan, San Jose, Mindoro Occidental | |
| FBT – Ligaya | Ligaya, Sablayan, Occidental Mindoro | |
| Rizal, Occ. Min. | Rizal St., San Jose, Occidental Mindoro | |
| Barangka | 1 A. Bonifacio Ave. Cor. Marcos Highway, Barangka, Marikina City | |
| JP Rizal | J.P. Rizal Street, Malanday, Marikina City | |
| Malinta | Brgy. Paso De Blas, Valenzuela City | |
| Cainta | A. Bonifacio Ave., Brgy. San Juan, Cainta Rizal | |
| FBT – Rodriguez | Sitio Harangan, San Isidro, Rodriguez, Rizal | |
| FBT – San Mateo | Gen. Luna St., Banaba, San Mateo, Rizal | |

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| Station Name | Station Address | Market Value in Pesos |
|---|---|---|
| L. Wood | 163 L. Wood St., Dolores, Taytay, Rizal 1920 | |
| Morong | San Pedro, Morong, Rizal | |
| Tanay | F.T. Catapusan St., Brgy. Plaza Aldea, Tanay, Rizal | |
| Taytay – Hiway 2000 | Hi-way 2000, Batong Dalig, San Juan, Taytay, Rizal | |
| Taytay – Rizal Ave. | J.P. Rizal Street, San Juan, Taytay Rizal | |
| FBT – Pagsanjan | Sampaloc, Pagsanjan, Laguna | |
| FBT – Pangil | Brgy. Isla, Pangil, Laguna | |
| FBT – Victoria | Brgy. Masapang, Victoria, Laguna | |
| Calaca | Expired Shell, Calaca, Batangas | |
| FBT – Lemery | Ilustre Ave., Brgy. Palanas, Lemery, Batangas | |
| Gulod | Brgy. Gulod, Labac, Batangas City, Batangas | |
| Lemery | Ex-Caltex, Lemery, Batangas | |
| Nasugbu- Pob. | F. Castro Street, Poblacion, Nasugbu, Batangas | |
| Nasugbu – Wawa | Brgy. Wawa, Nasugbu, Batangas | |
| Sta. Clara | Sta. Clara, Batangas City, Batangas | |
| Darasa | Darasa, Tanauan, Batangas | |
| Lipa City | National Road, Brgy. Banay-Banay, Lipa City, Batangas | |
| Suplang | Plantation Hills, Brgy. Suplang, Tanauan, Batangas | |
| FBT – Boac | Brgy. Santol, Boac, Marinduque | |
| FBT - Buenavista | Sitio Putat, Caigangan, Buenavista, Marinduque | |
| FBT – Mogpog | Market Site, Poblacio, Mogpog, Marinduque | |
| FBT – Sta Cruz 1 | Brgy. Manlibunan, Sta. Cruz, Marinduque | |
| Gasan | Brgy. Uno, Gasan, Marinduque | |
| Sta. Cruz Pob. | Maharlika, Sta. Cruz, Marinduque | |
| Torrijos | Poblacion, Torrijos, Marinduque | |
| Baco | Poblacion, Baco, Oriental Mindoro | |
| Bongabong | Brgy. Bagong Bayan, Bongabong, Oriental Mindoro | |
| Bongabong 2 | Brgy. Kaligtasan, Bongabong, Oriental Mindoro | |
| Calapan | Brgy. Bayanan I, Calapan City ,Oriental Mindoro | |
| FBT – Calapan | Calapan City | |
| FBT – Puerto Galera | Brgy. Minolo, Puerto Galera I, Oriental Mindoro | |
| FBT – Socorro | Brgy. Catiningan, Socorro, Oriental Mindoro | |
| Roxas, Oriental Mindoro | Brgy. Sta. Fe, Roxas, Oriental Mindoro | |
| FBT – Pili | New San Roque, Pili, Camarines Sur | |
| FBT – Tabaco | Brgy. San Lorenzo, Tabaco, Albay | |
| Legazpi | Cabangan West, Legazpi, Albay | |
| FBT – Aroroy Luy-a | Brgy. Luy-A, Aroroy, Masbate | |
| FBT – Cataingan | Brgy. Poblacion, Cataingan, Masbate | |
| FBT – Cawayan | Brgy. Mahayahay, Cawayan, Masbate | |

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| Station Name | Station Address | Market Value in Pesos |
|---|---|---|
| FBT – Palanas | Brgy. Nabangig Palanas, Masbate | |
| FBT – Pio V. Corpuz | Brgy. Manaay, Pio Y Corpuz, Masbate | |
| FBT – Umabay | Brgy. Umabay Exterior, Mobo, Masbate | |
| FBT – Uson | Brgy. Buenavista, Uson, Masbate | |
| Pinamarbuhan | Brgy. Pinamarbuhan, Mobo, Masbate | |
| Ticao | Calipat-an, San Jacinto, Masbate | |
| FBT – Kalibo Terminal | Oyo Torong Extn., Bachao/Bacjao Sur, Kalibo, Aklan | |
| FBT – Cagay | Brgy. Cagay, Roxas City, Capiz | |
| Atabay | Atabay, San Jose, Antique | |
| FBT – Belison | Brgy. Poblacion, Belison, Antique | |
| FBT – Hamtic | Brgy. Calala, Hamtic, Antique | |
| FBT – Pandan | Brgy. Nauring, Pandan, Antique | |
| FBT – Patnongon | Brgy. Apgahan, Patnongon, Antique | |
| FBT – San Angel | San Angel, San Jose, Antique | |
| FBT – San Remigio | Iverson Road, Poblacion, San Remegio, Antique | |
| FBT – Sibalom 1 | District 01 Poblacion Sibalom, Antique | |
| FBT – Sibalom 2 | Cubay, Napultan, Sibalom, Antique | |
| FBT – Tibiao | Malabor, Tibiao, Antique | |
| FBT – Jordan | Rizal, Jordan, Guimaras | |
| FBT – Pina | Brgy. Pina, Buenavista, Guimaras | |
| FBT – Batad | Pablacion, Batad, Iloilo | |
| FBT – Lambunao | Poblacion Ilawod, Lambunao, Iloilo | |
| FBT – Mina | Cabalabaguan, Mina, Iloilo | |
| FBT – Pototan | F. Parcon St., Pototan, Iloilo | |
| Cadiz | Cabahug St., Brgy. Zone 5, Cadiz City, Negros Occidental | |
| Escalante | Old Poblacion, Escalante, Negros Occidental | |
| FBT – Cadiz | Brgy. Caduha-an, Cadiz City, Negros Occidental | |
| Manapla | Purok Suhaga, Brgy. I-A Manapla, Negros Occidental | |
| Sagay | Brgy. Paraiso, Sagay, Negros Occidental | |
| Bacolod – Magsaysay | Magsaysay St., Brgy Zone 6, Talisay City, Negros Occidental | |
| FBT – Murcia | Brgy. Salvacion Murcia, Negros Occidental | |
| Gatuslao | Gatuslao St., Bacolod City, Negros Occidental | |
| Gonzaga | Gonzaga cor. Mabini St., Brgy. 24, Bacolod City, Negros Occidental | |
| Libertad | Cor. Smith Locsin-Libertad Streets, Bacolod City, Negros Occidental | |
| Luzuriaga | Brgy. 13, Luzuriaga St., Reclamation Area, Bacolod City, Negros Occidental | |
| Mansilingan | Mansilingan, Bangga Pare, Bacolod City, Negros Occidental | |
| Hinigaran | Hinigaran, Negros Occidental | |
| La Carlota | Cor. Yunque-Gurrea Streets, La Carlota City, Negros Occidental | |
| Bagacay | Brgy. Bacagay, Dumaguete City, Negros Oriental | |

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| Station Name | Station Address | Market Value in Pesos |
|---|---|---|
| FBT – Amlan 1 | National Highway, Mag-abo, Amlan, Negros Oriental | |
| FBT – Amlan 2 | Filoil Depot, Amlan, Negros Oriental | |
| FBT – Bacong | Banilad, Bacong, Negros Oriental | |
| FBT –Batinguel | Crossing Taclobo, Lower Batinguel, Dumaguete, Negros Oriental | |
| FBT – Jimalalud | North Poblacion, Jimalalud, Negros Oriental | |
| FBT – Manjuyod | Suba Manjuyod, Negros Oriental | |
| FBT – Perdices | Perdices St., Calindagan, Dumaguete City | |
| Looc | Brgy. Piapi, Looc, Dumaguete, Negros Oriental | |
| Taclobo | (HMT Dumaguete City) | |
| Valencia | Trenz, Valencia City, Negros Oriental | |
| FBT – Daan Bantayan | Tapilon, Daan Bantayan, Cebu | |
| Liloan | Nat'l Highway, Brgy. Yati, Liloan, Cebu | |
| Mandaue | Subang Daku, Mandaue, Cebu | |
| FBT – Alcantara | Poblacion, Alcantara, Cebu | |
| Bien Unido | Brgy. Nueva Esperanza, Bien Unido, Bohol | |
| Catigbian | Catigbian, Bohol | |
| FBT – Bilar | Cansumbol, Bilar, Bohol | |
| FBT – Dauis | Brgy. Mariveles, Dauis, Bohol | |
| FBT – Guindulman | Brgy. Tabajan, Guindulman, Bohol | |
| FBT – Jagna | Brgy. Looc, Jagna, Bohol | |
| FBT – Panglao | Brgy. Tawala, Panglao, Bohol | |
| FBT – Pilar Bohol | Brgy. Poblacion, Pilar, Bohol | |
| FBT – Talibon 1 | San Isidro, Talibon, Bohol | |
| FBT – Talibon 2 | Poblacion, Talibon, Bohol | |
| Loay | Poblacion Ibabao, Loay, Bohol | |
| Tagbilaran | Dampas, Tagbilaran City, Bohol | |
| FBT – Alang-alang | Brgy. Bunol Alangalang, Leyte | |
| FBT – Burayan | Brgy. 83, Burayan, San Jose, Tacloban City, Leyte | |
| FBT – Jaro | Macopa, Jaro, Leyte | |
| FBT – Tolosa | Brgy. Doña Brigida, Tolosa, Leyte | |
| Tacloban | Brgy. 92, Apitong, Tacloban City, Leyte | |
| FBT – Isabel | Sto. Niño, Isabel, Leyte | |
| FBT – Bontoc | Brgy. Divisoria, Botoc, Southern Leyte | |
| FBT - Sogod | Zone 1, Sogod, Southern Leyte | |
| FBT - Bacolor | Cabambangan, Bacolor, Pampanga | |
| FBT – Lubao | San Nicolas 1st, Lubao, Pampanga | |
| Lubao – San Roque | San Roque Arbol, Lubao, Pampanga | |
| Aliaga | Poblacion West III, Aliaga, Nueva Ecija | |
| Talavera | National Road, Talavera, Nueva Ecija | |
| FBT – Gapan | Sta. Cruz, Gapan, Nueva Ecija | |
| Sta. Rosa | National Road, Sta. Rosa, Nueva Ecija | |
| Bocaue | Eusebio Roque Ave., Caingin, Bocaue, Bulacan | |
| FBT – Guiguinto | Cagayan Valley Road, Sta. Rita, Guiguinto, Bulacan | |
| TAMBOBONG | Bocaue, Bulacan | |

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| Station Name | Station Address | Market Value in Pesos |
|---|---|---|
| FBT – Carriedo | Carriedo, Muzon, San Jose Del Monte, Bulacan | |
| FBT – Dulong Bayan | Dulong Bayan (Karyapay), SJDM, Bulacan | |
| FBT – Prenza | Prenza 1, Marilao, Bulacan | |
| FBT – San Rafael 1 | Brgy. Cruz na Daan, San Rafael, Bulacan | |
| FBT – San Rafael 2 | Pantubig, San Rafael, Bulacan | |
| FBT – Sta. Maria 1 | Matimyas St., Sta. Cruz, Sta. Maria, Bulacan | |
| Sta. Maria 3 | Bagbaguin, Sta. Maria, Bulacan | |
| FBT – Bagong Ilog | Corner Pasig Blvd. & Sgt. Pascua Streets, Bagong Ilog, Pasig City | |
| Shaw | Pasig Blvd, Brgy. Pineda, Pasig City | |
| Eusebio | Lit. A Eusebio Ave., San Miguel, Pasig City 1600 | |
| Manggahan | Amang Rodriguez Avenue, Manggahan, Pasig City | |
| Velasco | 111 Urbano Velasco Avenue, Pinagbuhatan, Pasig City | |
| FBT – Area 1 | Brgy Sta. Lucia, Dasmariñas, Cavite | |
| FBT – Bulihan | B42 L18 Brgy. Acacia, Bulihan, Silang, Cavite | |
| FBT – GMA | Palawan Cor. Visayas Aves., Maderan, GMA, Cavite | |
| GMA | GMA Cavite | |
| Gen. Trias – Priza | Bonifacio St., Brgy. Priza, General Trias, Cavite | |
| Molino | Jomil Bldg. Rd Molino IV, Bacoor, Cavite 4102 | |
| Sta. Maria 2 | Gov. Halili Ave., Brgy. Parada, Sta. Maria, Bulacan | - |
| San Nicolas 1 | Brgy. 22, San Guillermo, San Nicolas, Ilocos Norte | - |
| San Nicolas 2 | 23, Sta. Cecilia, San Nicolas 2, Ilocos Norte | - |
| Buenavista | Caigangan Buenavista, Marinduque | - |
| Liboro | Liboro St. Brgy. Pag-asa, San Jose, Occidental Mindoro | - |
| Payompon | Brgy. Payompon, Mamburao, Occidental Mindoro | - |
| FBT – Calindagan | Brgy. Calindagan, Dumaguete City, Negros Oriental | - |
| Rizal, Palawan | Punta Baja, Rizal, Palawan | - |
| Bubog | Bubog, Guimaras | - |
| Magsaysay | Tabuk, Kalinga | - |
| SJC - Poblacion | Rizal St. Barangay 1 (Pob.), San Jose, Mindoro Occidental, Philippines | - |
| **TOTAL MARKET VALUE** | | |

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As a result of the sale of the service stations, the business of Filoil Energy Company was effectively transferred to TOTAL PHILIPPINES CORPORATION, which necessarily included the goodwill that was acquired during the operation and management of Filoil Energy Company.

In reply, please be informed as follows:

***Goodwill is a capital asset only on the part of Total Philippines Corporation.***

As enunciated in *WM H. Anderson vs. Juan Posadas, Jr., G.R. No. 44100, September 22, 1938*, viz:

> *"The phrase 'good will' is defined in 28 Corpus Juris, 729, section 1, as follows:*
>
> *Goodwill may be defined to be the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital stock, funds, or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity or reputation for skill, affluence, punctuality, or from other accidental circumstances or necessities, or even from accident partialities or prejudices. . . .*
>
> *According to the above-quoted definition, good will is the reputation of good name of an establishment. If the good will, that is, the good reputation of the business is acquired in the course of its management and operation, it does form part of the capital with which it was established. It is an intangible moral profit, susceptible of valuation in money, acquired by the business by reason of the confidence reposed in it by the public, due to the efficiency and honesty shown by the manager and personnel thereof in conducting the same on account of the courtesy accorded its customers, which moral profit, once it is valuated and used, becomes a part of the assets."*

This Office agrees that goodwill forms part of the capital with which it was established and once it is valuated and used, becomes a part of the assets. The Office further agrees that goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized [Philippine Financial Reporting Standards 3 (Revised)]. It is an intangible asset which cannot exist independently of the business. It cannot be sold, purchased or transferred separately without carrying out the same transactions for the business as a whole. **Goodwill is tagged to a company or business and cannot be sold or purchased independently**.

Thus, on the part of the seller, Filoil Energy Company, the amount paid for "goodwill" is part and parcel of the selling price. This is consistent with Philippine Financial Reporting Standards 3 (Revised) that goodwill is tagged to a company or business (which is an ongoing concern) and cannot be sold or purchased independently.

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A capital asset is defined negatively in Section 39 (A) (1) of the National Internal Revenue Code (NIRC) of 1997, as amended and as implemented by Section 2 (a) of Revenue Regulations (RR) No. 7-2003:

*"SECTION 39. Capital Gains and Losses. —*

*(A) Definitions. — As used in this Title —*

*(1) Capital Assets. — The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."*

Therefore, on the part of the purchaser, Total Philippines Corporation, goodwill is a capital asset since (1) it is not included in stock in trade which would properly be included in the inventory at the close of the taxable year, (2) it is not held primarily for sale to customers in the ordinary course of his trade or business, (3) it is not a property used in the trade or business, of a character which is subject to the allowance for depreciation provided in subsection (f) of Section 34 of the Tax Code, and (4) it is not a real property used in the trade or business.

***The sale of the service gas stations is subject to VAT under Section 105 of the Tax Code of 1997, as amended.***

Section 105 of the National Internal Revenue Code of 1997, as amended, provides –

*"SEC. 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.*

*xxx xxx xxx*

*The phrase "in the course of trade or business" means regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.*

*xxx xxx xxx"*

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In relation thereto, Section 14 (B) (p) (1), RR 4-2007 states –

"Section 14. VAT-EXEMPT TRANSACTIONS. - Sec. 4.109-1(B)(1) of RR No. 16-2005 is hereby amended to read as follows:

"SEC. 4.109-1. VAT-Exempt Transactions.- Xxx xxx xxx. (B) Exempt transactions . – Subject to the provisions of Sec. 4.109-2 hereof, the following transactions shall be exempt from VAT:

XXX XXX XXX

(p) The following sales of real properties are exempt from VAT, namely: (1) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business. However, even if the real property is not primarily held for sale to customers or held for lease in the ordinary course of trade or business but the same is used in the trade or business of the seller, the sale thereof shall be subject to VAT being a transaction incidental to the taxpayer's main business."

The service gas stations, although not primarily held for sale or lease to customers, are ordinary assets used by Filoil Energy Company in its ordinary course of business.

Applying Section 105 of the Tax Code of 1997, as amended, in relation to Section 14 (B) (p) (1) of RR 4-2007, the sale of the service gas stations of Filoil Energy Company to Total Philippines Corporation is subject to VAT, it being a transaction incidental to the pursuit of Filoil Energy Company's commercial and economic activity.

Based on the foregoing, this Office is of the opinion that the total amount paid, including the amount pertaining to assigned goodwill, by Total Philippines Corporation to Filoil Energy Company is subject to VAT pursuant to Section 105 of the 1997 Tax Code, as amended.

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

034308

K-1