August 28, 2019

BIR RULING NO. 454-19

Section 109 (G) of the NIRC of 1997, as amended; BIR Ruling No. 308-2017

Medical Services of America, Inc.
3/F Remcor Bldg., Rizal Ave. Ext.
(Between 10th & 11th Ave.), Caloocan City 1400

Attention: *AAA*

Gentlemen :

This refers to your request dated February 21, 2018 for the issuance of Certificate of VAT exemption in favor of **MEDICAL SERVICES OF AMERICA, INC. ("MSA"** for brevity) pursuant to Revenue Regulations No. 16-2005 as amended by Revenue Regulations No. 04-2007.

Documents submitted show that **MSA**, with Taxpayer's Identification Number (TIN) 000-000-000-000, is a foreign corporation organized and existing under the laws of Virginia, U.S.A.; that it is duly registered with the Securities and Exchange Commission (SEC) under SEC Reg. No. F-829 dated July 01, 2002; and that as shown in its Articles of Incorporation, its primary purpose is "*to undertake the installation and operation of specialized medical equipment and devices in hospitals and clinics and patients who wish to avail of said services in their homes, for the purpose of providing complete respiratory therapy, including pulmonary functions and cardio diagnostic studies and tests to be conducted on physician's orders; to sell on wholesale basis and/or rent specialized medical equipment to hospitals, clinics and physicians who require the same for their patients*."

It is represented that the services being offered by **MSA** are medical and laboratory services; that **MSA** sells specialized medical equipment to hospitals, clinics and physicians; that it had partnered with several hospitals to operate their Respiratory Unit and executed a Memorandum of Agreement in each partnered hospitals as one of the requirements of the Department of Health ("DOH") to be part of the hospital's Clinical Services and Facilities for In-Patients; that the DOH issued a License to Operate (LTO) in the name of the partnered

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hospitals, and did not issue a separate LTO for **MSA**.

In reply, please be informed that Section 109 (G) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 109. *Exempt transactions.* — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (G) Medical, dental, hospital and veterinary services except those rendered by professionals;
>
> xxx xxx xxx."

In relation thereto, Revenue Regulations No. 16-2005 provides:

> "Section 4.109-1. VAT-Exempt Transactions. —
>
> (A) *In general.* — "VAT-exempt transactions" refer to the sale of goods or properties and/or services and the use or lease of properties that is not subject to VAT (output tax) and the seller is not allowed any tax credit of VAT (input tax) on purchases.
>
> The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT.
>
> (B) *Exempt transaction.* —
>
> xxx xxx xxx
>
> (g) Medical, dental, hospital and veterinary services, except those rendered by professionals.
>
> *Laboratory services are exempted.* If the hospital or clinic operates a pharmacy or drug store, the sale of drugs and medicine is subject to VAT. (Emphasis ours)
>
> xxx xxx xxx."

Based on the expressed provisions of the foregoing, it is clear that laboratory services are considered transactions exempt from VAT. Applying it to the instant case, insofar as the operation of pulmonary equipment which is necessary for respiratory services, ventilators, extraction of specimen for ABG analysis, rendition of therapeutic services, critical/emergency care and diagnostic services by **MSA** are concerned, this Office hereby confirms that these are considered exempt from VAT. As service provider, **MSA** shall not

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pass on the VAT to its clients because said transactions are not subject to VAT.

However, in relation to the conduct of diagnostic services, whether such is also exempt from VAT shall depend on how it is provided. The process of *diagnosis* is defined as the discovery of the source of a patient's illness or the determination of the nature of his disease from a study of its symptoms. [1] The conduct of diagnostic service may either be carried out by an employee of **MSA** or by an independent professional (consultants).

When conducted by the employee of **MSA**, the process of diagnosis shall form part of the medical/laboratory services and the service fee, as payment for both diagnostic and laboratory services as a package, is VAT-exempt by express provision of Section 109 (G) of the NIRC of 1997, as amended and implemented by Revenue Regulations No. 16-2005. On the other hand, diagnostic services, when rendered by an independent professional (consultant), shall appropriately be subject to VAT in the hands of the one who performs it but **MSA** cannot claim it as input tax credit. (Sec. 109 (G) *supra*). Thus, the independent professional who conducted the diagnostic service must issue official receipt for the payment of fees therefor.

Moreover, the sale/rent of medical equipment in hospitals, clinics and patients, which include the delivery and installation of specialized medical equipment and devices by **MSA** shall be subject to value-added tax pursuant to Section 106 (A) of the NIRC of 1997, as amended, in relation to Section 4.106-1 of Revenue Regulations No. 16-2005, as amended by Revenue Regulations No. 13-2018.

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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Definition is lifted from The Attorney's Pocket Dictionary (Law and Business Publications, Inc.).

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