March 16, 2018

BIR RULING NO. 531-18

Section 57 of the NIRC of 1997, as amended; Revenue Regulations (RR) No. 2-98, as amended

Filoil Energy Company, Inc.
Building F. Phoenix Sun Business Park,
E. Rodriguez Jr. Avenue, Bagumbayan,
Quezon City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 24, 2016, seeking confirmation with regard to a legal opinion issued by Revenue Region No. 07, Quezon City, dated October 17, 2016, in response to a query by Filoil Energy Company, Inc. ("Filoil" for brevity) on the matter of withholding tax provisions of the National Internal Revenue Code of 1997, as amended, and discussed under Revenue Regulations (RR) No. 2-98, as amended.

The facts as stated and specified in the legal opinion of Revenue Region No. 07, Quezon City, are as follows:

1. Filoil sold gasoline station assets to Total Philippine Corporation ("Total" for brevity);

2. The assets sold include dispensing pumps, underground tanks, signage, and other related equipment, used primarily in operation and are consistently depreciated on a regular basis;

3. The sale price is P_____; and

4. Total is registered as a large taxpayer.

In view of the foregoing representations, Revenue Region No. 07, Quezon City, is of the opinion that such sale of assets is subject to one percent (1%) creditable withholding tax (CWT) pursuant to Section 2.57.2 (M) of RR No. 2-98, as amended. Thus, you now request for the confirmation of such legal opinion.

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In reply, please be informed that Section 2.57.2 (M) of RR No. 2-98, as amended, provides that:

> *"Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items on income payments to persons residing in the Philippines*:
>
> xxx xxx xxx
>
> *(M) Income payments made by the top twenty thousand (20,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top 20,000 private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident aliens engaged in trade or business in the Philippines. Provided, however, that for purchases involving agricultural products in their original state, the tax required to be withheld under, this sub-section shall only apply to purchases in excess of the cumulative amount of Three Hundred Thousand Pesos (P300,000) within the same taxable year. For this purpose, agricultural products in their original state as used in these regulations, shall only include corn, coconut, copra, palay, rice, cassava, sugar cane, coffee, fruits, vegetables, marine food products, poultry and livestocks.*
>
> *Supplier of goods — One percent (1%)*
>
> *Supplier of services — Two percent (2%)*
>
> xxx xxx xxx
>
> ***The term "goods" pertains to tangible personal property used in the ordinary course of business and/or practice of profession. It does not include intangible personal property as well as real property***." (Emphasis and underscoring supplied)

Under the above quoted provisions of Section 2.57.2 (M) of RR No. 2-98, as amended, the one percent (1%) CWT is applicable only to sales of personal properties used in the ordinary course of business and/or practice of profession. It is not applicable to sales of intangible personal properties as well as real property.

The assets sold by Filoil to Total consisting of dispensing pumps, underground tanks, signage, and other related equipment which are being used primarily in its operation and are consistently depreciated on a regular basis are considered as real properties pursuant to Article 415 (5) of the New Civil Code, to wit:

> *"Art. 415. The following are immovable property*:
>
> xxx xxx xxx

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(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works."

Accordingly, the sale of assets used in business by Filoil to Total shall be subject to six percent (6%) CWT, and not to one percent (1%) CWT, based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6 (E) of the National Internal Revenue Code of 1997, as amended, whichever is higher, which tax must be withheld by Total from the selling price paid to Filoil. The six percent (6%) CWT is based on Section 2.57.2 (J) of RR No. 2-98, as amended, which states that:

"Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items on income payments to persons residing in the Philippines.

xxx xxx xxx

(J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset. — A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:

xxx xxx xxx

iii. Where the seller/transferor is not habitually engaged in the real estate business — 6.0%

xxx xxx xxx"

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

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