April 30, 2018

BIR RULING NO. 749-18

RA No. 8436, as amended by RA No. 9369; BIR Ruling No. 390-15

Santiago & Santiago Law Offices
Ground Floor, Ortigas Building
Ortigas Avenue cor. Meralco Avenue
Pasig City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 16, 2017, requesting, on behalf of your clients, 2GO Express, Inc. (2GO Express) and 2GO Logistics, Inc. (2GO Logistics) confirmation that its contracts with the Commission on Elections (COMELEC) for the deployment of automated election system equipment and other allied equipment in relation to the May 9, 2016 National, Local and ARMM automated elections (2016 Automated elections) are exempt from Value-Added Tax (VAT) and percentage tax.

The facts as represented are as follows:

2GO Express is a corporation duly organized and existing under the laws of the Philippines, with Securities and Exchange Commission (SEC) Reg. No. 81206 and Taxpayer Identification No. (TIN) 000-000-000-000. Its principal office is at General Aviation Area, Manila, Domestic Road, Pasay City. On the other hand, 2GO Logistics is a corporation duly organized and existing under the laws of the Philippines, with SEC Reg. No. CS200700296 and Taxpayer Identification No. (TIN) 000-000-000. Its principal office is at No. 46 Metroasia Compound, Elisco Road, Brgy. Ibayao, Tipas, Taguig City.

The COMELEC is an independent Constitutional Commission, with principal office address at Palacio del Gobernador, Postigo Street, Intramuros, Manila. Under the 1987 Constitution, the COMELEC is tasked with the mandate to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall. In relation to the administration of the May 9, 2016 Automated Elections, the COMELEC issued an Invitation to Bid for the Deployment of Automated Election System Equipment and Allied Services (BAC Reference No. 10-2015-AES-DEP).

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2GO Express and 2GO Logistics entered into a joint venture, named 2GO JV, for purposes of bidding for the above-mentioned deployment of the said service for the COMELEC. In its invitation to Bid for the Deployment of Automated Election System Equipment and Allied Services, the COMELEC through its Bids and Awards Committee, indicated that the total approved budget for the contract is inclusive of all taxes, such as, but not limited to, VAT, income tax, local taxes and other fiscal levies. 2GO JV eventually won the bidding for the deployment of the said services.

Immediately after awarding the bid, the COMELEC entered into two (2) Service Contracts with 2GO JV. The first contract was executed on 14 March 2016, covering the deployment of automated election system equipment and allied services for Lot 1 (CAR, Regions I, II and III), for Lot 2 (NCR, Regions IV and V), and for Lot 3 (Regions VI, VII and VIII). The second contract was executed on 22 March 2016 for Lot 4 (Regions IX, X, XI, XII, CARAGA and ARMM). Since the execution of the Service Contracts and to date, 2GO JV has complied with its obligations and deliverables based on the terms agreed upon.

Based on the foregoing representations, you now request confirmation that the two (2) contracts entered into by 2GO JV with the COMELEC are exempt from VAT and percentage tax.

In reply, please be informed that RA No. 8436, as amended by RA No. 9369, provides for the COMELEC's exemption from taxes on its procurement of goods and services in relation to the automated elections, *viz.*:

> *"**SEC. 12. Procurement of Equipment and Materials.** — To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulations. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness."* (Emphasis supplied)

In BIR Ruling No. 390-2015 dated November 3, 2015, this Office had the occasion to rule as follows:

> *"It must be noted that the twelve percent (12%) VAT or the three percent (3%) percentage tax, whichever is applicable, is a tax on the business transaction or activity and is an indirect tax which the seller of goods or services may pass-on or shift to the customer/purchaser who ultimately bears or assumes the burden of the tax. However, Section 12 of RA No. 8436, as amended by RA No. 9369, clearly intended to exempt COMELEC from the 12% VAT and 3% percentage tax on its local purchases of goods and services as well as importation of goods that will be*

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used relative to the conduct of the May 9, 2016 National, Local and ARMM automated elections. Hence, the suppliers/sellers of goods and services to COMELEC cannot shift or pass on any VAT or percentage tax to COMELEC on the latter's purchases of goods and services that will be used in the May 9, 2016 National, Local and ARMM automated elections. Moreover, importation by COMELEC of goods that will be used in the May 9, 2016 automated elections is also exempt from VAT."

Accordingly, since the two (2) Service Contracts entered into by and between 2GO JV and the COMELEC on March 14, 2016 and March 22, 2016 pertain to the deployment of automated election system equipment and allied services in relation to the May 9, 2016 National, Local and ARMM automated elections, the same are exempt from VAT and percentage tax pursuant to Section 12 of RA No. 8436, as amended by RA No. 9369.

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.

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

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