REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: February 29, 2012

REVENUE MEMORANDUM CIRCULAR NO. 8-2012

Subject: Circularization of the relevant excerpts from the *En Banc* Supreme Court Decision in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, represented herein by Hon. Jose Mario Buñag, in his official capacity as Commissioner of Internal Revenue, public respondent, JOHN DOE and JANE DOE, who are persons acting for, in behalf, or under the authority of Respondent, public and private respondents,* G.R. No. 172087 dated March 15, 2011, on excluding PAGCOR from exemption from corporate Income Tax and the declaration of nullity of the pertinent provisions of Revenue Regulations No. 16-2005 relative to the imposition of 10% VAT on PAGCOR; and subsequently, the En Banc Court Resolution dated May 31, 2011 *denying with finality* the relevant motions for partial reconsideration thereto.

To: All Internal Revenue Officials and Employees Concerned

For the information and guidance of all internal revenue officials and employees concerned, quoted hereunder is the relevant portion of the *En Banc* Supreme Court Decision in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, represented herein by Hon. Jose Mario Buñag, in his official capacity as Commissioner of Internal Revenue*, G.R. No. 172087 dated March 15, 2011, concerning the liability of PAGCOR to corporate Income Tax and the revocation of the pertinent provisions of Revenue Regulations No. 16-2005 relative to the imposition of 10% VAT on PAGCOR:

"*xxx xxx xxx*

Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.

In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to ***require PAGCOR to pay corporate income tax****; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim expressio unius est exclusio alterius. Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: exceptio firmat regulam in casibus non exceptis.*

PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records of the Bicameral Conference Meeting dated October 27, 1997, of the Committee on Ways and Means, show that PAGCOR's exemption from payment of corporate income tax, as provided in Section 27 (c) of R.A. No. 8424, or the National Internal Revenue Code of 1997, was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause. The legislative records show that the basis of the grant of exemption to PAGCOR from corporate income tax was PAGCOR's own request to be exempted.

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It is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law. 43 RR No. 16-2005, therefore, cannot go beyond the provisions of R.A. No. 9337. Since PAGCOR is exempt from VAT under R.A. No. 9337, the BIR exceeded its authority in subjecting PAGCOR to 10% VAT under RR No. 16-2005; hence, the said regulatory provision is hereby nullified.

WHEREFORE, the petition is PARTLY GRANTED. Section 1 of Republic Act No. 9337, amending Section 27 (c) of the National Internal Revenue Code of 1997, by excluding petitioner Philippine Amusement and Gaming Corporation from the enumeration of government-owned and controlled corporations exempted from corporate income tax is valid and constitutional, while BIR Revenue Regulations No. 16-2005 insofar as it subjects PAGCOR to 10% VAT is null and void for being contrary to the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337." (Underscoring provided)

Subsequently, we quote the Court En Banc Resolution dated May 31, 2011 **denying with finality** motions for partial reconsideration relative to the foregoing :

> *"G.R. No. 172087 (Philippine Amusement and Gaming Corporation [PAGCOR] vs. Bureau of Internal Revenue, et al.) – Acting on the separate Motions for Partial Reconsideration of the Decision March 15, 2011 filed by counsel for Bureau of Internal Revenue and the Office of the Government Corporate Counsel for PAGCOR, the Court Resolved to* ***DENY WITH FINALITY*** *the said motions for partial reconsideration, as the basic issues raised therein have been passed upon by this Court and no substantial arguments were presented to warrant the reversal of the questioned Decision."*

All revenue officials and employees are enjoined to give this Circular as wide publicity as possible.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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