REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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RECORDS MGT. DIVISION
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15 July 2015

REVENUE MEMORANDUM CIRCULAR No. 40- 2015

SUBJECT : **Clarifying the Nature and Extent of the Agricultural Cooperative Being the Producer of Sugar for Exemption from Advance VAT and Percentage Tax Purposes Pursuant to Section 5(b)(c) of Revenue Regulations (RR) No. 8-2015, in relation to Section 4(a) of RR No. 13-2008, and in line with Section 8(b.2.1.2) of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of Republic Act (RA) No. 9520, or the Cooperative Code of 2008.**

TO : **All Internal Revenue Officers and Others Concerned.**

Section 1. BACKGROUND:

Section 109 (1)(L) of the National Internal Revenue Code (NIRC), as amended, exempts from Value-Added Tax (VAT) sale by agricultural cooperatives duly registered with the Cooperative Development Authority (CDA) **of their produce**, whether in its original state or processed form, to non-members.

Section 5(b) of Revenue Regulations (RR) No. 8-2015 (dated 22 May 2015),[1] on the other hand, provides that the withdrawals of Sugar[2] for sale to non-members is subject to payment of advance VAT or percentage tax **if the agricultural cooperative is not the producer** of Sugar. Section 5(c) of RR 8-2015 likewise provides that **if the seller-cooperative is not an agricultural producer** but merely purchases the Sugar from planter, whether members or non-members, or transfer the Sugar to cooperative through assignment, its sale of the resulting Sugar to another agricultural cooperative shall be subject to VAT and its withdrawals from the Sugar Refinery/Mill will only be allowed upon payment of the advance VAT or Percentage Tax.

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1 Amending Revenue Regulations No. 6-2015 on the Definition of Raw Cane Sugar for Purposes of the Imposition of Advance Business Tax (Value-Added Tax or Percentage Tax) and for Other Purposes

2 Sugar – refers to sugar other than Raw Cane Sugar as defined in the preceding paragraph. This includes sugar whose content of sucrose by weight, in the dry state corresponds to a polarimeter reading of 99.5° and above and/or whose color is 800 ICU or less.

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Finally, Section 8(b.2.1.2) of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of Republic Act (RA) No. 9520, or the Cooperative Code of 2008, states that sale by agricultural cooperatives to non-members can only be exempted from VAT **if the producer of the agricultural products sold is the cooperative itself**. If the cooperative is not the producer (*e.g.* trader), only those sales to its members shall be exempted from VAT.

From the aforesaid provisions of laws and revenue issuances, it is, thus, clear that in order that withdrawals of Sugar by agricultural cooperative for sale to non-members or to another agricultural cooperative be exempt from advance VAT or Percentage Tax, the agricultural cooperative **must be the producer of Sugar**.

Under Section 4(a) of RR No. 13-2008 (dated 19 September 2008),[3] "***a cooperative is said to be the producer of the sugar if it is the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined***". This definition is consistent with the definition of "*producer's cooperative*" under Article 23[c] of R.A. No. 9520, which is one that undertakes **joint production** whether agricultural or industrial. It is formed and operated by its members to undertake the production and processing of raw materials or goods produced by its members into finished or processed products for sale by the cooperative to its members and non-members. Any end product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative, shall be deemed a product of the cooperative and its members.

In fact, Section 8(b.2.1.2) of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA 9520 provides – following the aforesaid definition of "*producer's cooperative*" – that the exempt transactions pursuant to Section 109(1)(L) of the NIRC, as amended, shall include sales made by a **duly registered agricultural cooperative organized and operated by its members to undertake the production and processing of raw materials or of goods produced by its members into finished or processed products for sale by said cooperative to its members and non-members**: *Provided, finally*, That any processed product or its derivative arising from the raw materials produced by its members, sold in the name and for the account of the cooperative, shall be deemed the product of the cooperative

Section 2. PURPOSE/OBJECTIVE:

To avoid confusion and to give full effect to the provisions of Section 5(b)(c) of RR No. 8-2015, in relation to Section 4(a) of RR No. 13-2008, and in line with Section 8(b.2.1.2) of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA 9520, this

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[3] Consolidated Regulations on Advance Value Added Tax on the Sale of Refined Sugar; Amending and/or Revoking All Revenue Issuances Issued to this Effect, and for Other Related Purposes.

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Circular is being issued to clarify the nature and extent of the agricultural cooperative being the producer of Sugar for sale to non-members or another agricultural cooperative for exemption from advance VAT or Percentage Tax purposes.

Section 3. CLARIFICATION:

It is hereby clarified that a duly registered agricultural cooperative is said to be the producer of Sugar - consistent with the concept of a producer's cooperative being a joint production wherein raw materials or goods are produced by its members for processing into finished or processed products - if the following requisites are present:

(a) it is the tiller, thru its members, of the land it owns, or leases; **and**,

(b) it incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

The aforesaid requisites **must concur**. In the absence of any one of these requisites, an agricultural cooperative cannot be considered a producer of Sugar and, thus, its withdrawals of Sugar for sale to non-members or another agricultural cooperative are subject to advance VAT or Percentage Tax.

Section 4. EFFECTIVITY:

All revenue officers and employees are hereby enjoined to give this Circular as wide a publicity as possible.

This Circular shall take effect immediately.

KIM S JACINTO-HENARES
Commissioner of Internal Revenue

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