REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**

October 21, 2005

**REVENUE MEMORANDUM CIRCULAR NO. 59-2005**

**SUBJECT** : Clarification on the Tax Treatment of Petroleum Products Sold to International Marine Vessels

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

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This Circular is issued to clarify the guidelines and rulings laid down in BIR Ruling No. DA 427-2004 dated August 10, 2004 and BIR Ruling No. 001-2004 dated January 12, 2004, on the excise tax consequence affecting petroleum products sold to international marine vessels.

Section 135 of the Tax Code of 1997 provides:

*"Sec. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies. — Petroleum products sold to the following are exempt from excise tax:*

*"(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;*

*"(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and*

*"(c) Entities which are by law exempt from direct and indirect taxes."*

It has been ruled that to be entitled to exemption under Section 135(a) quoted above from the payment of excise tax imposed under Section 148 of the Tax Code, (1) the petroleum products must be sold to an international carrier for its use and consumption outside the Philippines; and (2) that the country of said carrier exempts from payment of excise tax petroleum products sold to Philippine carrier. (BIR Ruling No. DA 427-2004)

While it has also been ruled that the requirement for direct sale of petroleum products to international marine vessel, in order to qualify for excise tax exemption, is not expressly provided for by the aforecited provisions of the Tax Code, the excise tax exemption on removals intended for delivery to international marine vessel is not considered absolute. Such transaction is treated only as conditionally tax-exempt removal subject to certain administrative requirements in order to prevent any tax leakage arising from possible diversion of delivery of petroleum products to unqualified entities.

In connection therewith, the following conditions shall be strictly complied with on the sale of petroleum products to international marine vessels in order to avail of the said excise tax exemption under Section 135(a) of the Tax Code:

1. The petroleum products covered by this Circular shall be limited to bunker fuel, special fuel oils, and diesel fuel that are used by the international marine vessels for their own fuel consumptions outside the Philippines;

2. The excise tax on these petroleum products shall not be billed or passed on by the manufacturers or oil refiners to the international marine vessels;

3. The petroleum products are sold, directly or through an oil broker, to an international marine vessel. For this purpose, the term “oil broker” shall be limited to a middleman who acts for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; he is, in more ways than one, an agent of both parties. His task is to bring the parties together and to get them to come to an agreement. A basic characteristic of the broker is that he acts not for himself, but for a third person, regardless of whether the fee paid to him is a fixed amount, regular or not, or whether the act performed by him can be performed by the principal or not (Nichimen Corporation vs. Court of Appeals, G.R. No. 139674, 06 March 2003). Furthermore, a broker is one who is engaged for others in the negotiation of contracts relative to property with the custody of which they have no concern. He acts as a negotiator in bringing other persons together to bargain; generally, he ought not to sell in his own name, has no implied authority to receive payment, is not entrusted with the physical possession of the principal’s goods when engaged to buy or sell, and has no special property therein or thereon (8 Am. Jur. 889-890, cited in Philipp Brothers Oceanic, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 3140, 08 March 1984);

   The excise tax exemption herein may be availed of though the sale is made through other intermediary party/ies like traders provided that their roles are limited to that of a broker as defined herein, and as long as they also comply with the requirements of this Circular.

4. The international marine vessel shall utilize such petroleum products for their exclusive use or consumption outside the Philippines (Section 135(A) of the Tax Code of 1997);

5. The country of registry of the international marine vessel to whom the petroleum products are sold also exempts from a similar tax the petroleum products sold to Philippine-registered international marine vessels (Section 135(B) of the Tax Code of 1997; Section 2 of Revenue Regulations No. 13-77, as amended by Revenue Regulations No. 5-78);

6. The petroleum products to be sold shall be entirely sourced from the oil refinery or from Bureau of Internal Revenue (BIR)-bonded tanks, since the products stored thereat are still not subject to excise tax, unless the same are removed and delivered to taxable entities;

7. For purposes of monitoring, the BIR shall be informed by the oil refiner/company-seller for each and every transaction, or for a series of transactions involving a particularly identified international marine vessel customer before any withdrawal (i.e., delivery to the marine vessel) of petroleum products, either from the refinery or from the bonded storage tank. In cases of emergency, however, notification shall be made within twenty-four hours from such delivery (Section 31 Chapter VIII of Revenue Regulations No. 13-77);

8. For purposes of item 7 above, the following documents shall be submitted by the oil company-seller and the same shall provide sufficient basis for notification and/or permit:

    a. Supply Invoice and Nomination Letter/Purchase Order, in the absence of the Supply Contract, either for a single sale or series of sales transactions;

    b. Certification by the Bureau of Customs (BOC), the government agency that issues the bunkering permit for international vessels, that the purchaser is an international marine vessel or that the said vessel does not ply the domestic waters. For purposes of entitlement to excise tax exemption, the international marine vessel must depart from a port in the Philippines directly to a foreign port without stopping or docking to any other port in the Philippines.

9. All transfers of such petroleum products shall be accounted for and recorded in the Official Register Book (ORB) with a separate subsidiary ledger therefor, and with all stocks on hand accounted for on a First-in-First-out basis (Section 43(3)(b) of Revenue Regulations No. 13-77);

10. Each and every removal of the petroleum product shall be accompanied by a Withdrawal Certificate (WC) issued by the oil company-seller duly attested to by the Revenue Officer on Premise (ROOP). In addition to the information prescribed to be reflected in the WC, the phrase "EXEMPT SALE TO INTERNATIONAL MARINE VESSEL UNDER SECTION 135" must be clearly indicated on the face of the said WC. The name of the international vessel as well as its registered name shall be indicated as the consignee-buyer in the WC;

11. The Sales Invoice to be issued by the seller shall indicate the name of the international marine vessel as the buyer and the registered name of the vessel. The name of the broker shall not be interchangeably used as the name of the buyer but the same may be indicated in the address field provided for in the invoice with the phrase as follows:

"c/o Name of Intermediary Party/Broker"

12. The petroleum products shall be delivered directly from the refinery or bonded storage tank to the international marine vessel;

13. A duly executed Certificate by the Master or Captain of the international carrier or its local agent shall immediately be issued to the seller upon completion of delivery, including an acknowledgment of the date of receipt, the volume and description of such petroleum products received and measured at air, and the immediate and final destination of the international marine vessel. A copy of the Manifest shall be attached to the Certification. This certification shall serve as one of the proofs of the delivery of the petroleum product to the international marine vessel and the same shall be presented upon request to any duly authorized representative of the BIR.

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

(Original Signed)
**JOSE MARIO C. BUÑAG**
OIC-Commissioner of Internal Revenue