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

Quezon City

January 22, 2008

**REVENUE REGULATIONS NO. 3 - 2008**

**SUBJECT** : Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment

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

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**BACKGROUND:**

While the government recognizes the immunity from taxation and other tax privileges enjoyed by certain persons or entities provided under the National Internal Revenue Code (NIRC) and other special laws, as well as those granted under their own respective charters or tax treaties, conventions and other international agreements, it is our declared policy to regulate the grant of tax relief in order to prevent possible abuses.

As a general rule, all withdrawals of excisable articles from their place of production must be subject to excise tax. The grant of an outright tax exemption is discouraged because it deprives the Bureau of Internal Revenue (BIR) the opportunity to evaluate ***thoroughly*** the factual and legal bases of the tax relief *sought*. It is for these reasons that remedies after payment of the tax is more favored by the government because this option will give more protection to revenue collections without diminishing the impact of the tax relief ***to which the taxpayers are entitled***. These remedies may either come in the form of: (1) a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC; or (2) a product replenishment, the mechanics of which is provided in these regulations.

Accordingly, these revenue regulations are being issued for the sole purpose of attempting to maintain the enjoyment of tax privileges ***by*** these tax-exempt persons or entities but, at the same time, maintaining the equilibrium between stability of revenue collections on one side, and giving the taxpayers what is legally due them on the other. These regulations likewise intend to minimize the rising incidents of reported diversions of declared articles for export to the local market, as well as domestic sales originally declared as intended to tax-exempt persons and entities but are subsequently found in possession of persons or entities that are not entitled to such tax exemption privilege. Moreover, these regulations also intend to rationalize the practice of some taxpayers of immediately availing outright tax exemption but are

delaying and/or totally ignoring the prescribed submission and full liquidation of their claimed tax-exempt shipments with complete supporting documents.

**SECTION 1. SCOPE.**– Pursuant to the provisions of Section 244 in relation to Section 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated in order to amend certain provisions of existing revenue regulations which grant exemption from excise tax on the removal of excisable articles intended to be exported or sold/delivered to international carriers or tax-exempt entities/agencies, and to prescribe the provisions for availing a claim for product replenishment as a remedy on the imposition of excise tax on such removals.

**SEC. 2. IMPOSITION OF EXCISE TAX ON REMOVAL OF EXCISABLE ARTICLES FOR EXPORT OR SALE/DELIVERY TO INTERNATIONAL CARRIERS AND OTHER TAX-EXEMPT ENTITIES/AGENCIES.**– Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies: *Provided,* That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable.

**ILLUSTRATIONS:**

No. 1 - CPI Corp., a manufacturer of petroleum products, will remove from its refinery 10,000 liters of Jet A-1 for delivery to Speed Air, an international airline.

Question : If the rate of excise tax for Jet A-1 is P3.67 per liter, how much is the total excise tax due that CPI Corp. should pay before removal of the said article from its refinery?

Answer : CPI Corp. should pay the total excise tax in the amount of P36,700.00 before the removal of Jet A-1 from its refinery.

No. 2 - "Doods Filter King", a cigarette brand which is locally manufactured and currently sold in the domestic market by Taurus Corp., is tax classified at P10.88 per pack.

Question : Assuming that Taurus Corp. will export to and introduce the said brand in Japan, what will be the applicable excise tax rate that should be imposed thereon before its removal from the factory?

Answer : Since the said brand is already sold in the domestic market with a tax classification of P10.88 per pack, the same excise tax rate shall be imposed before the removal thereof from the factory and subsequently exported to Japan.

Question : Assuming that the same brand is not being sold in the domestic market but instead, it is being manufactured by Taurus Corp. exclusively for export to Japan, what will be its tax classification?

Answer : The tax classification of the said brand shall be determined according to the value declared by Taurus Corp. in its manufacturer's sworn statement which was submitted when the said brand was registered with the BIR.

For this purpose, all permits issued by the BIR to maintain BIR-bonded storage facilities are hereby revoked or withdrawn upon the effectivity of these Regulations. Accordingly, the excise tax due on all excisable articles stored in the said bonded storage facilities shall be paid by the manufacturer thereof pursuant to the transitory provisions of these Regulations.

*Provided, however,* That the tax treatment on the direct exportation and/or domestic sale/delivery to international carriers and to other tax-exempt entities/agencies by any person who is authorized to maintain and operate customs' bonded facilities, or by any person or entity registered within the economic or freeport zones, shall be covered by a separate revenue regulations, in coordination with the appropriate regulatory government agencies.

**SEC. 3. DISCOVERY IN THE DOMESTIC MARKET OF TAX-PAID ARTICLES INTENDED FOR EXPORTS.** - The payment of excise tax prescribed herein for articles exclusively intended for export or for sale/delivery to tax-exempt entities/agencies or international carriers, but later found in the domestic market, shall not give rise to the automatic amendment of the previous permit to export issued for such purpose. The same shall be subject to the applicable penalties attendant thereto.

**SEC. 4. FAILURE TO COMPLY WITH PRINTING REQUIREMENTS NOT ENTITLED TO TAX CREDIT/REFUND OR PRODUCT REPLENISHMENT.** - The printing requirements under existing rules and regulations on labels and packages on the articles exported or sold/delivered to tax-exempt/agency or international carrier shall be complied with strictly; otherwise, the same shall not be entitled to any tax credit/refund or product replenishment.

**SEC. 5. EXEMPTION FROM THE IMPOSITION OF EXCISE TAX UPON REMOVAL.** - In case of sale/delivery to embassies, legates such as the Office of the Papal Nuncio, or international organizations (i.e. Asian Development Bank, International Rice Research Institute, United Nations' various international

organizations such as World Health Organization, UNICEF, etc.), the excisable articles may be removed from the place of production of the manufacturer without payment of the excise tax, subject to the following conditions:

(a) For each and every transaction, a prior written permit therefor shall be secured by such tax-exempt entities from the LT Assistance Division II (LTAD II); and

(b) No subsequent permit shall be approved and issued unless a liquidation report on the previously purchased tax-exempt articles has been submitted by the said tax-exempt entities to LTAD II within thirty (30) days from the date of removal of the tax-exempt article from the place of production. However, any subsequent application for permit filed by the same tax-exempt entity before the lapse of the said prescribed liquidation period may be processed by the said Office pending submission of the liquidation report on the previously issued permit, but approval thereof shall be made only after completion of the liquidation of the previous purchases.

For this purpose, the liquidation report shall be accompanied by copies of the following documents:

(1) Commercial invoice issued by the manufacturer;
(2) Delivery receipt issued by the manufacturer;
(3) Official Receipt issued by the manufacturer;
(4) Certificate of Registration with the Land Transportation Office (LTO), in case of automobiles; and
(5) Withdrawal Certificate (WC), Official Delivery Invoice (ODI) or any BIR-prescribed forms to document removal of excisable articles from the place of production.

**SEC. 6. CLAIM FOR PRODUCT REPLENISHMENT.** – In case the excisable products were removed by the manufacturer thereof from his place of production or from any storage facility located outside his place of production after prepayment of the excise tax for purposes of exportation or sale/delivery to tax-exempt entities/agencies or international carriers pursuant to these Regulations, the said manufacturer may, at its option, avail a claim for product replenishment, instead of filing a claim for tax credit/refund of the excise tax that has been previously paid on the articles removed for such purposes, subject to the following requirements:

**A. CONDITIONS FOR PRODUCT REPLENISHMENT**

The option of product replenishment may be availed of by the manufacturer only under the following conditions:

(a) Excisable articles, regardless of the volume and value, which are, likewise, intended for exportation or sale/delivery to international carriers or tax-exempt entities/agencies maybe allowed to be removed from the place of production without the payment of the excise tax in order to replenish the excise tax-paid article that was previously exported or sold/delivered to international carriers or tax-exempt entities/agencies.: *Provided,* That the total excise tax

that has been previously paid is sufficient to cover the excise tax due on the subsequent exportation or sale/delivery to international carriers or tax-exempt entities/agencies;

(b) In case the excise tax that has been actually paid in the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers is LESS than the excise tax that is otherwise due on the articles applied for product replenishment, the difference shall be paid by the manufacturer before removal thereof from the place of production. On the other hand, in case the same is MORE than the excise tax that is otherwise due on articles applied for product replenishment, the difference thereof may be utilized for any future application for product replenishment. In lieu thereof, and at the option of the manufacturer, he may also file a claim for tax credit/refund with the appropriate office in the BIR, subject to the prescriptive period requirements of the Tax Code.

(c) In case the rate of excise tax imposed at the time of application for replenishment shall be different from that imposed and paid at the time of the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers, or in case the articles applied for replenishment are no longer subject to excise tax, the following rules shall be observed:

(1) If the equivalent excise tax that was paid is MORE than the equivalent excise tax that is otherwise due on the articles applied for replenishment, the volume of articles representing the difference may be the subject of any future application for product replenishment, or the manufacturer, may, at his option, file a claim for tax credit/refund with the appropriate office in the BIR for the excess excise tax paid which represents such difference, subject to the prescriptive period requirements of the Tax Code.

(2) If the equivalent excise tax that was previously paid is LESS than the equivalent excise tax that is otherwise due on the articles applied for replenishment, the volume of articles applied for replenishment representing the difference shall be disallowed from the said application and the corresponding excise tax due shall be paid by the manufacturer before removal from the place of production.

(3) If the articles applied for replenishment are no longer subject to excise tax, the manufacturer shall file a claim for tax credit/refund for the excise tax that has been paid on the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers, subject to the prescriptive period requirements of the Tax Code.

(d) The excise tax on articles intended for export or sale/delivery to tax-exempt entity/agency or international carrier upon which a

claim for replenishment shall be subsequently filed with the BIR should be actually paid before removal from the place of production using Payment Form No. 0605 on a "per shipment basis" in order to facilitate the processing of such claim. Accordingly, claims for replenishment of articles upon which the excise tax was paid under the advance deposit schemes shall not be accepted.

(c) For purposes of continuity on the availment of the product replenishment on subsequent exportations or sales/deliveries to international carriers or tax-exempt entities/agencies of excisable articles, the concerned excise taxpayer shall, for each and every shipment of the articles, file an application for product replenishment, together with the copy of Payment Form No. 0605 as proof of additional excise tax payment. The documentary proofs of the actual shipment prescribed under these Regulations for application for product replenishment shall be submitted within ninety (90) days from the date of actual shipment: *Provided, however,* That, in case of failure to submit the said documents within the said prescribed period, the corresponding excise taxes shall be assessed and collected from the concerned excise taxpayer, inclusive of increments. The BIR shall approve the application for product replenishment in the total amount of excise tax, including any additional excise tax that has been previously paid by the concerned excise taxpayer.

**ILLUSTRATIONS:**

No. 3 - On October 1, 2007, CPI Corp., a manufacturer of petroleum products, removed from its refinery 10,000 liters of Jet A-1 for delivery to Speed Air, an international airline after payment of the excise tax due thereon in the amount of P36,700.00. The BIR approved the claim of CPI Corp. for product replenishment covering the said volume and excise tax that has been paid after the said company applied therefor on November 15, 2007. The company was authorized by the BIR on November 25, 2007 to remove a similar kind and volume without payment of the excise due thereon in the amount of P36,700.00 for delivery to Japan Airlines (JAL), an international airline, on November 28, 2007.

Question : Assuming that the company intends to deliver 12,000 liters of Jet A-1 to Cathay Pacific Airlines, another international airline, on December 10, 2007, should the company pay the entire excise tax due in the amount of P44,040.00 since it has already fully utilized its excise tax payment in a previous application for product replenishment?

Answer : No, CPI Corp. should not pay the entire amount. It should only pay the difference of P7,340.00

(P44,040 less P36,700.00) as the company is still eligible for product replenishment.

No. 4 - The cigarette manufacturer, Gemini Corp., exported to Thailand their cigarette brands "A", "B" and "C" with different volumes and tax classifications after payment of the excise tax in the total amount of P45,000.00.

Question : Assuming that the company will export again to Thailand the cigarette brands "A" and "B" including another cigarette brand "Z" with different volumes and tax classifications. The total excise tax due thereon is P35,000.00. Can the company apply, as a product replenishment, the excise tax of P45,000.00 that it has paid in the previous exportation on the excise tax due on this subsequent shipment?

Answer : Yes, CPI Corp. can still avail the product replenishment scheme for the excise tax due on the forthcoming exportation. The excess amount of P10,000.00 (P45,000.00 less P35,000.00) can still be applied for future product replenishment.

## B. APPLICATION FOR PRODUCT REPLENISHMENT

The manufacturer shall file a written application for Product Replenishment Certificate (Form No. _____) (Annex "A") with the Chief, Field Operations Division (LTFOD), Large Taxpayers Service in the National Office of the Bureau of Internal Revenue (BIR), together with the following copies of documents:

(1) For Direct Export Transactions:

a. "Export Permit" of product applied for replenishment
b. Proof of payment of the excise tax due on the product
c. Purchase order
d. Commercial invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
e. Packing list
f. Bill of Lading
g. Withdrawal Certificate, Official Delivery Invoice or any BIR-prescribed forms to document removal of excisable articles from the place of production
h. Inward remittance of the export proceeds in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). In case the said remittance covers several exportations, the same shall be accompanied by a summary of the details thereof indicating the commercial invoice numbers, bills of lading numbers and the amounts of sales.

i. "Certificate of Loading" issued by the Bureau of Customs (BOC)
j. Certified true copy of the container scanner's report and **film negative** issued by the BOC
k. Batch liquidation statements indicating receipts and removals
l. Other documents as may be required, if warranted

(2) Sale/Delivery to International Carriers

a. Proof of reciprocity agreement duly attested by the Department of Foreign Affairs (DFA)
b. Bilateral air agreement with the foreign country of destination, in case of international air lines
c. "Certificate of Registration" issued by the Maritime Authority of the Philippines (MARINA) certifying that the marine vessel is exclusively engaged in international shipping
d. Sales invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
e. Purchase order or supply agreement
f. Proof of payment of the excise tax
g. Withdrawal Certificate, Official Delivery Invoice or any BIR-prescribed forms to document removal of excisable articles from the place of production
h. Batch liquidation statements indicating receipts and removals
i. Proof that the excise tax was not billed to the customer
j. Other documents as may be required, if warranted

(3) Sale/Delivery to Entities Registered in Freeport/Economic Zones/ Other Tax-Exempt Entities/Agencies (PEZA, SBMA, etc.)

a. "Certificate of Registration" duly issued by the Regulatory Authority of the freeport/economic zone
b. "Certificate of Good Standing" duly issued by the appropriate government regulatory agency for the covered period
c. Sales invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
d. Purchase order or supply agreement
e. Proof of payment of the excise tax
f. Withdrawal Certificate, Official Delivery Invoice or any BIR-prescribed forms to document removals of excisable articles from the place of production
g. Batch liquidation statements indicating receipts and removals
h. Proof that the excise tax was not billed to the customer
i. Certified true copy of the gate pass documenting the entry of the article in the secured area of the freeport/economic zone
j. Certification duly issued by the appropriate government regulatory agency that the article did not subsequently enter the customs territory
k. Other documents as may be required, if warranted

## C. TIME OF FILING A CLAIM FOR PRODUCT REPLENISHMENT

The said application for product replenishment shall be filed within ninety (90) days from the actual date of exportation or sale/delivery to the tax-exempt entity/agency or international carrier: *Provided,* That the failure to file the said application within the said prescribed period or the denial of the said application for replenishment shall not preclude the applicant from filing an application for tax credit/refund in accordance with the existing rules, subject to the prescriptive period requirement of the Tax Code.

## D. PERIOD FOR PROCESSING A CLAIM FOR PRODUCT REPLENISHMENT

The approved Product Replenishment Certificate (PRC) shall be issued by the Chief, LTFOD within ten (10) days from the actual date of filing of the application with ***complete supporting documents*** prescribed by these Regulations.

## E. UTILIZATION OF PRODUCT REPLENISHMENT CERTIFICATE

A duly approved and issued PRC (BIR Form No. _____ ) (Annex "B") shall be utilized by filing an application for Product Replenishment Debit Memo (PRDM) (BIR Form No. _____) (Annex "C") with the Chief, LTFOD that will serve as the authority of the taxpayer to remove the excisable article from his place of production without the actual payment of the excise tax: *Provided, however,* That any outstanding excise tax liability that is due and demandable from the concerned taxpayer shall be paid first before the said certificate shall be allowed to be utilized.

## F. VALIDITY OF THE PRODUCT REPLENISHMENT CERTIFICATE

The PRC shall remain valid within five (5) years from the date of issuance thereof as indicated on the face of the said Certificate. In the event that the Certificate has not been utilized within the said prescribed period, a one-time revalidation thereof shall be allowed by filing an application for revalidation with the appropriate BIR Office before the expiration of its validity. A duly-approved PRC, based on its outstanding balance, may be converted into a Tax Credit Certificate (TCC) or Tax Refund at anytime during the validity thereof by filing a written application to the appropriate BIR Office: *Provided, however,* That, in case the PRC is converted into a TCC, the period of validity of the TCC shall be the same with the remaining period of validity of the PRC.

The sale, assignment or transfer of any Product Replenishment Certificate to another person is hereby prohibited.

**G. REQUIREMENTS ON BIR-PRESCRIBED FORMS FOR WITHDRAWALS**

For every removal of articles which is covered by a PRC, the phrase "COVERED BY PRDM NO. _____ UNDER PRC NO. _____" as well as the volume and the corresponding amount of excise tax covered by the said certificate shall be clearly printed or stamped on the face of accompanying BIR-prescribed forms, such as the Withdrawal Certificates and the Official Delivery Invoices. In case of failure to comply with this requirement, the excise tax due on such removal shall be assessed and collected by the BIR from the manufacturer.

**SEC. 7. DISALLOWANCES ON CLAIMS FOR TAX CREDIT/ REFUND OR PRODUCT REPLENISHMENT.** - For purposes of filing a claim with the BIR for tax credit/refund or product replenishment on excise taxes that have been paid on excisable articles that were actually exported or sold/delivered to tax-exempt entities/agencies or international carriers by the manufacturers thereof where the excisable article is composed of locally manufactured excisable article and imported article, the claim for the excise tax on the imported article shall not be allowed. The same shall be separately filed, for purposes only of claiming a tax refund/credit, with the appropriate office in the BIR for the conduct of verification and preparation of the recommendation report to the Bureau of Customs (BOC). On the basis of the transmitted recommendation report of the BIR, the BOC shall subsequently process the claim in accordance with its existing or governing rules and policies on the matter. In no case that imported articles shall be subject to product replenishment under any circumstances.

**SEC. 8. TRANSITORY PROVISIONS.** – Upon the effectivity of these Regulations, all manufacturers shall submit to the Chief, LT Field Operations Division (LTFOD) directly, or thru the Head of Excise Tax Areas, a notarized list of inventory of under-bond articles held in their respective possession as of the effectivity of these Regulations, together with the proofs of payment of the excise tax due thereon, not later than five (5) days from the effectivity of these Regulations. All concerned Heads of Excise Tax Areas shall transmit the inventory lists and the proofs of payment of the excise tax to the Chief, LTFOD within twenty four (24) hours from the actual date of receipt thereof. The BIR shall validate the correctness of the inventory lists and the deficiency excise tax, if any, shall be assessed and collected from the concerned taxpayer.

For purposes of facilitating the processing of subsequent claims for product replenishments, tax credit or refund where the above inventory of under-bond articles was removed for direct exportation or sale/delivery to international carriers or to tax-exempt entity/agency, the payment of the excise tax due on the said inventory of under-bond articles shall be made using BIR Form No. 0605 with the phrase "NOTE: THIS EXCISE TAX PAYMENT IS SUBJECT TO SUBSEQUENT PRODUCT REPLENISHMENT, TAX CREDIT OR REFUND" clearly printed on the face of the said form.

**SEC. 9. PENALTY CLAUSE. –** Violations of these Regulations shall be subject to the corresponding penalties under Title X of the NIRC of 1997, as amended.

**SEC. 10. REPEALING CLAUSE.** – All regulations, rulings, orders, or portions thereof which are inconsistent with the provisions of these Regulations are hereby revoked, repealed or amended, accordingly.

**SEC. 11. EFFECTIVITY.** – These Regulations shall take effect after fifteen (15) days following publication in newspapers of general circulation.

(Original Signed)
**MARGARITO B. TEVES**
Secretary of Finance

Recommending Approval:

(Original Signed)
**LILIAN B. HEFTI**
Commissioner of Internal Revenue