REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

REVENUE REGULATIONS NO. 7-2016

Date: November 15, 2016

SUBJECT: *Rules and Regulations Implementing the Tax Incentives Available to Tourism Enterprises Duly Registered with the Tourism Infrastructure and Enterprise Zone Authority under Republic Act No. 9593 otherwise known as the "Tourism Act of 2009"*

TO: *All Internal Revenue Officers and Others Concerned*

SECTION 1. *Scope.* – Pursuant to the provisions of Sections 244 and 245 of the National Internal Revenue Code of 1997, as amended, in relation to Section 85(a) of Republic Act (RA) No. 9593 or the "Tourism Act of 2009", these regulations are hereby promulgated to implement the fiscal incentives available to Tourism Enterprises duly registered with the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) under RA No. 9593.

SEC. 2. *Definitions.* – For purposes of these Revenue Regulations, the terms used herein shall be defined as follows:

a. *Accommodation Establishments* shall include, but will not be limited to, hotels, tourist inns, motels, apartelles, resorts, home stay operators, and pension houses;

b. *Brownfield Tourism Zone* shall refer to an area with existing infrastructure or development as determined by the TIEZA;

c. *Existing Registered Tourism Enterprise* shall refer to a tourism enterprise located within a tourism enterprise zone which has started business operations at the time of its application for registration with TIEZA;

d. *Existing Tourism Enterprises* shall refer to a tourism enterprise located outside a tourism enterprise zone which has started business operations at the time of its application for registration with TIEZA;

e. *Greenfield Tourism Zone* shall refer to a new or pioneer development, as determined by the TIEZA;

f. *New Registered Tourism Enterprise* shall refer to a tourism enterprise whose facilities/place of business shall be constructed/established within a Greenfield or a Brownfield tourism enterprise zone and has not started business operations at the time of its registration with TIEZA;

g. *Original Investment* shall refer to the fair market value of the physical assets, exclusive of land acquisition costs, as defined by TIEZA.

h. *Registered Tourism Enterprise* (RTE) shall refer to an enterprise located within a tourism enterprise zone that is duly-registered with the TIEZA;

i. *Start of Business Operations* shall refer to the date specified in an enterprise's application for registration with the TIEZA or the actual date of commencement of operation, whichever is earlier;

j. *Substantial Expansion* shall refer to an expansion, renovation, or upgrade of the physical assets of an enterprise which is intended to extend the life of its assets or to increase the capacity or efficiency of the enterprise, resulting to a significant change in its category classification under the Department of Tourism's accreditation system in appropriate cases, and amounting to at least 50% of its original investment;

k. *TIEZA Board* shall refer to the duly appointed board of directors mandated to govern and exercise the powers of the TIEZA;

l. *Tourism Enterprise Zone (TEZ)* shall refer to tourism enterprise zones created and qualified under the criteria pursuant to RA No. 9593 and designated as such by the TIEZA Board;

m. *Tourism Enterprises* shall refer to facilities, services and attractions involved in tourism, such as, but not limited to: travel and tour services; tourist transport services, whether for land, sea or air transportation; tour guides; adventure sports services involving such sports as mountaineering, spelunking, scuba diving, and other sports activities of significant tourism potential; convention organizers; accommodation establishments; tourism estate management services, restaurants, shops and department stores, sports and recreational centers, spas, museums and galleries, theme parks, convention centers and zoos;

n. *Tourism Infrastructure and Enterprise Zone Authority (TIEZA)* shall refer to the body corporate which shall designate, regulate and supervise the TEZs established under RA No. 9593, as well as develop, manage and supervise tourism infrastructure projects in the country.

SECTION 3. Fiscal Incentives of Tourism Enterprises Within TEZs. – The following incentives may, in the discretion of the TIEZA Board, be granted to Tourism Enterprises within TEZs:

1. ***Income Tax Holiday for New Registered Tourism Enterprises and Existing Registered Tourism Enterprises in TEZs.*** – New RTEs in Greenfield and Brownfield TEZs may be granted an Income Tax Holiday (ITH) for six (6) years from the start of business operations on income from its TIEZA-registered activity/ies.

The ITH granted to a new RTE may be extended: Provided, that prior to the expiration of the first six (6) years, the RTE shall undertake a Substantial Expansion: Provided, that the ITH extension shall consider the cost of such expansion or upgrade in relation to the original investment: Provided further, That the extension shall in no case exceed a total additional period of six (6) years: Provided, finally, That for the purpose of availment of this incentive, the RTE shall apply in writing to TIEZA for the extension of ITH not later than three (3) months prior to the expiration of the initial ITH and shall submit proof of compliance with the criteria for a Substantial Expansion.

An existing RTE in a brownfield TEZ shall be entitled to avail of a non-extendible ITH if it undertakes a Substantial Expansion. The extent of the grant of such ITH shall consider the cost of such expansion or upgrade in relation to the original investment, but shall in no case exceed six (6) years to be counted from the time of completion of the expansion or upgrade: Provided, That capital expenditures to be considered in granting an ITH shall mean money spent to acquire or upgrade physical assets such as buildings, machinery and equipment, intended to extend the life of an asset or increase the capacity or efficiency of an RTE: Provided further, That in case of expansion involving the improvement of existing structures or constructing new ones, such expansion shall consider the substantial amount infused, the substantial number of rooms added or constructed, and, where applicable, their change in classification from three-star to five-star establishments.

2. ***Gross Income Tax.*** – As an alternative to the ITH incentive, a new RTE may, in lieu of all national internal revenue taxes except real estate taxes and such fees as may be imposed by TIEZA, pay a tax of five percent (5%) on its gross income earned from its registered activity/ies, subject to the compliance with the conditions prescribed by TIEZA and these Rules. This tax shall be remitted as follows:

    a. One-third to be proportionally allocated among affected cities or municipalities based on the area of the RTE as determined by TIEZA;
    b. One-third to the national government; and
    c. One-third to the TIEZA.

    "*Gross Income*" shall refer to gross sales or gross revenues derived by a new RTE, from its registered business activity within a TEZ, net of sales discounts, sales returns and allowances, and minus costs of sales or direct costs, but before any deduction is made for administrative, marketing, selling, and operating expenses or incidental losses during a given taxable period as provided in the National Internal Revenue Code of 1997, as amended, and other pertinent revenue regulations.

For purposes of computing the five percent (5%) tax imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned:

a. Direct salaries, wages or labor expense;
b. Service supervision salaries;
c. Direct materials or supplies used in registered activities;
d. Depreciation of machinery and equipment used in registered activities, and of that portion of the building owned or constructed that is used exclusively in undertaking the registered activities;
e. Rent and utility charges for buildings and capital equipment used in undertaking registered activities; and
f. Financing charges associated with fixed assets used in registered activities, the amounts of which were not previously capitalized.

3. ***Net Loss Carry Over.*** - The net operating loss of an RTE for any taxable year immediately preceding the current taxable year shall be carried over as a deduction from gross income for the next six (6) consecutive taxable years immediately following the year of such loss: Provided, that such loss has not been previously offset as a deduction from gross income, and it shall cover net operating losses incurred after the start of business operations and registration with TIEZA: Provided further, that RTEs enjoying an ITH or the preferential 5% gross income tax rate shall not be allowed a NOLCO deduction: Provided, further, that in case of an RTE which is engaged in both TIEZA-registered and unregistered business activities, the net operating loss or losses sustained or incurred by the RTE from its registered activities shall not be allowed as NOLCO deduction from its gross income derived from the unregistered business activities.

4. ***Exemption from Taxes on Importation of Capital Investment and Equipment.*** - Importation of capital investment and equipment as provided under applicable TIEZA guidelines by an RTE shall be exempt from taxes, subject to the following conditions:

a. The capital investment and equipment are directly and actually needed and shall be used exclusively in the registered activity; and
b. Subject to reasonable allowances, the rated capacity of the capital equipment to be imported shall be within the registered capacity of the RTE.

The approval of the TIEZA shall be obtained prior to such importation.

Any sale, transfer, assignment, donation or other form of disposition of originally imported capital investment and equipment/machinery, brought into the TEZ duty- and tax-free, shall

require prior approval of the TIEZA Board: Provided, that any sale, transfer, assignment, donation or other form of disposition, within five (5) years from date of acquisition, shall be granted only if the sale or other form of disposition is made under the following circumstances:

a. To an RTE or tourism enterprise entitled to duty- and tax-free importation of machinery or to any other enterprise enjoying similar incentives under existing laws;
b. For reasons of proven technical obsolescence;
c. For purposes of replacement to improve and/or expand the operations of the RTE intending to sell, transfer, assign, donate or otherwise dispose of such machinery or spare parts; or
d. In cases of withdrawal or cessation from operations of the RTE.

If the RTE sells, transfers, or disposes of the machinery and equipment without prior approval of the TIEZA, the RTE and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of tax exemptions granted.

5. ***Exemption from Taxes on the Importation of Transportation Equipment and Spare Parts.*** - Importation of transportation equipment and their accompanying spare parts by a new or expanding Registered Tourism Enterprise shall be exempt from national taxes, subject to the following conditions:

a. That the transportation equipment and accompanying spare parts are not manufactured domestically in sufficient quantity, of comparable quality, and at reasonable prices;
b. That the transportation equipment and accompanying spare parts are reasonably needed to perform the TIEZA-registered activities of the RTE; and
c. That the transportation equipment and accompanying spare parts shall be used exclusively by the RTE.

The approval of the TIEZA shall be obtained prior to such importation.

Any sale, transfer, assignment, donation or other form of disposition of originally imported transportation equipment or accompanying spare parts, brought into the TEZ duty- and tax-free, shall require prior approval of the TIEZA Board: Provided, that any sale, transfer, assignment, donation or other form of disposition, within five (5) years from date of acquisition, shall be granted only if the sale or other form of disposition is made under the following circumstances:

a. To an RTE or tourism enterprise entitled to duty- and tax-free importation of transportation equipment and accompanying spare parts or to any other enterprise enjoying similar incentives under existing laws;

b. For reasons of proven technical obsolescence;
c. For purposes of replacement to improve and/or expand the operations of the RTE intending to sell, transfer, assign, donate or otherwise dispose of such transportation equipment and accompanying spare parts; and
d. In cases of withdrawal or cessation from operations of the RTE.

If the RTE sells, transfers, or disposes of the transportation equipment or accompanying spare parts without prior approval of the TIEZA, the RTE and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of tax exemptions granted.

6. ***Goods and Services Incentives.*** - RTEs engaged in the sale of services shall be entitled to the following:

   a. Exemption from VAT and excise taxes on the importation of goods necessary to carry out its TIEZA-registered activity/ies and are actually consumed in the course of services related to its registered activity actually rendered by the RTE within the TEZ: Provided, however, that no goods shall be imported for the purpose of operating a wholesale or retail establishment in competition with the Duty Free Philippines Corporation; and

   b. A tax credit equivalent to national internal revenue taxes paid on all locally-sourced goods and services used by the RTE for services pursuant to its registered activity which are actually rendered within the TEZ: Provided, that input VAT paid by an RTE shall only be allowed as a credit against its output VAT liability, in accordance with existing rules and regulations.

7. ***Social Responsibility Incentive.*** - RTEs shall be entitled to a tax deduction of up to fifty percent (50%) of the cost of:

   a. Environmental protection activities in the surrounding areas of the enterprise or the TEZ as certified by the Department of Environment and Natural Resources: Provided, that environmental protection activities conducted for the purpose of securing an Environmental Compliance Certificate (ECC) under the Philippine Environmental Impact Assessment (EIA) system, as required by Philippine environmental laws, or for purposes of securing other requirements under applicable laws and regulations, shall not be covered by this incentive;

   b. Cultural heritage preservation activities in the surrounding areas of the enterprise or the TEZ conducted pursuant to RA No. 10066, as certified by the appropriate cultural agency and the Local Culture and Arts Council in the local government unit where the tourism enterprise is located;

c. Sustainable livelihood programs for local communities in the surrounding areas of the enterprise or the TEZ which may be chosen from the list of activities identified by the National Anti-Poverty Commission (NAPC); and

d. Other similar activities as may be determined by the TIEZA Board.

Provided, that the approval of the TIEZA Board shall be obtained prior to undertaking such activities/programs: Provided further, that the activities conducted under this section do not comprise and are not ancillary to the registered activity of the RTE.

The costs of these activities/programs shall include only those directly incurred to undertake the same. For purposes of availing of this tax deduction, an RTE shall submit to the BIR proof of the costs incurred (official receipts, sales invoices) and the direct relation of such costs to the environmental protection / cultural heritage preservation activity or sustainable livelihood program which directly benefited the local communities. All expenses, especially for hotel accommodations, transportation, entertainment, and communication, shall be strictly scrutinized in the course of evaluating such tax deductions in the course of a tax audit investigation.

RTEs shall, under RA No. 10708, report such tax deductions as "Other Income Tax Incentives".

SECTION 4. Fiscal Incentives of Tourism Enterprises outside TEZs. – The following incentives may, in the discretion of the TIEZA Board, be granted to TIEZA-registered Tourism Enterprises outside TEZs:

1. ***Income Tax Holiday.*** – Existing accommodation establishments outside TEZs shall be entitled to avail of a non-extendible ITH of up to six (6) years for a Substantial Expansion. The extent of the grant of such ITH shall consider the cost of the expansion or upgrade in relation to the original investment, but shall in no case exceed six (6) years to be counted from the time of completion of the expansion, renovation or upgrade: Provided, That capital expenditures to be considered in granting an ITH shall mean money spent to acquire or upgrade physical assets such as buildings, machinery and equipment, intended to extend the life of an asset or increase the capacity or efficiency of the accommodation enterprise: Provided further, That in case of expansion involving the improvement of existing structures or constructing new ones, such expansion shall consider the substantial amount infused, the substantial number of rooms added or constructed, and, where applicable, their change in classification from three-star to five-star establishments.

2. ***Exemption from Taxes on Importation of Capital Investment and Equipment.*** - Importation of capital investment and equipment as

provided under applicable TIEZA guidelines by an accommodation enterprise, when necessary for a Substantial Expansion which will be subject to an application for ITH with the TIEZA, shall be exempt from taxes, subject to the following conditions:

a. The capital investment and equipment are directly and actually needed and shall be used exclusively by the accommodation enterprise in its TIEZA-registered activity; and
b. Subject to reasonable allowances, the rated capacity of the capital equipment to be imported shall be within the registered capacity of the accommodation enterprise.

The approval of the TIEZA shall be obtained prior to such importation, taking into consideration the necessity of the importation in connection to a Substantial Expansion which will be subject to an application for an ITH incentive with the TIEZA. Should the expansion or upgrade not meet the TIEZA requirement for a Substantial Expansion, the accommodation enterprise shall be liable to pay the import VAT and excise taxes as originally due, plus the applicable interest and penalties computed from the date these taxes should have been paid on the importation had no incentives been granted.

Any sale, transfer, assignment, donation or other form of disposition of originally imported capital investment and equipment/machinery, bought duty- and tax-free, shall require prior approval of the TIEZA Board: Provided, that any sale, transfer, assignment, donation or other form of disposition, within five (5) years from date of acquisition, shall be granted only if the sale or other form of disposition is made under the following circumstances:

a. To an RTE or tourism enterprise entitled to duty- and tax-free importation of capital investment and equipment/machinery or to any other enterprise enjoying similar incentives under existing laws;
b. For reasons of proven technical obsolescence;
c. For purposes of replacement to improve and/or expand the operations of the accommodation enterprise intending to sell, transfer, assign, donate or otherwise dispose of such machinery or spare parts; or
d. In cases of withdrawal or cessation from operations of the accommodation enterprise.

If the accommodation enterprise sells, transfers, or disposes of the capital investment and equipment/machinery without prior approval of the TIEZA, the RTE and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of tax exemptions granted.

3. ***Net Loss Carry Over.*** - The net operating loss of a Tourism Enterprise for any taxable year immediately preceding the current taxable year

shall be carried over as a deduction from gross income for the next six (6) consecutive taxable years immediately following the year of such loss: Provided, that such loss has not been previously offset as a deduction from gross income, and it shall cover net operating losses incurred after the start of business operations and registration with TIEZA: Provided further, that Tourism Enterprises enjoying an ITH or the preferential 5% gross income tax rate shall not be allowed a NOLCO deduction: Provided, further, that in case of a Tourism Enterprise which is engaged in both TIEZA-registered and unregistered business activities, the net operating loss or losses sustained or incurred by the Tourism Enterprise from its registered activities shall not be allowed as NOLCO deduction from its gross income derived from the unregistered business activities.

SECTION 5. Availment of Tax Incentives. – Enterprises availing of incentives under RA No. 9593 are required to obtain from TIEZA, on an annual basis, a Certificate of Entitlement (CE) as proof of their entitlement to such incentives.

In availing of incentives, the CE and the TIEZA Certificate of Registration shall be attached to the Income Tax Returns (ITRs) and/or the applicable tax return upon filing of the returns. In the absence of the CE and the TIEZA Certificate of Registration, the BIR shall disallow any claim of incentive.

SECTION 6. Withholding Taxes. - Nothing in these regulations shall operate to exempt an RTE from its duties as a withholding agent under the National Internal Revenue Code of 1997, as amended, and relevant revenue issuances.

SECTION 7. TEZs not Treated as Separate Customs Territories. – Nothing in these regulations shall operate to give TEZs the status of separate customs territories or freeport zones.

SECTION 8. Maintenance of Separate Books of Account for each TIEZA-registered Activity. – An RTE or Tourism Enterprise availing of incentives under RA no. 9593 shall maintain distinct and separate books of accounts for each of its TIEZA-registered activity/ies.

SECTION 9. Compliance with RA No. 10708. – As a Registered Business Entity under RA No. 10708, Tourism Enterprises availing of incentives under RA No. 9593 shall comply with the reportorial requirements under RA No. 10708 and its Implementing Rules and Regulations.

SECTION 10. No Double Availment of Incentives Schemes. – Tourism enterprises availing of the incentive scheme under RA No. 9593 shall not be qualified to avail of similar or identical incentives schemes under other laws, decrees, presidential issuances, rules and regulations.

SECTION 11. Period of Availment. – The incentive schemes set forth in these Rules shall be in effect for a period of ten (10) years from the effectivity of RA

No. 9593, which period is subject to review by the Joint Congressional Oversight Committee on Tourism.

SECTION 12. Payment of Back Taxes. – In case the TIEZA registration of an RTE or a Tourism Enterprise is downgraded, suspended, or revoked, the TIEZA shall order it to pay back taxes in an amount equivalent to the difference between the taxes that it should have paid had it not availed of incentives under RA 9593 and the actual amount of taxes paid by it under RA 9593. These back taxes shall be computed up to three (3) years directly preceding the date of promulgation of the decision or order finding that the enterprise violated the terms of its accreditation. The proceeds of these back taxes shall be distributed as follows:

(a) One-third to the National Government;
(b) On-third to the LGUs concerned, to be shared by them equally should there be more than one such LGU; and
(c) One-third to the TIEZA.

Such back taxes dating three (3) years directly preceding the date of promulgation of the TIEZA's decision may be assessed by the Bureau of Internal Revenue notwithstanding the lapse of the three (3) – year period to assess taxes under Section 203 of the National Internal Revenue Code of 1997, as amended.

SECTION 13. Separability Clause. – If any clause, sentence, provision or section of these Rules shall be held invalid or unconstitutional, the remaining parts thereof shall not be affected thereby.

SECTION 14. Effectivity. – These regulations shall take effect after fifteen (15) days following publication in the Official Gazette or a newspaper of general circulation, whichever comes first.

(Original Signed)
CARLOS G. DOMINGUEZ III
Secretary of Finance

Recommending Approval:

(Original Signed)
CAESAR R. DULAY
Commissioner of Internal Revenue