REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
QUEZON CITY

OT-343-2021
SEP 30 2021

ANSI CORPORATION
No. 32 Lot 3B &3C Arty 1 Street
Barangay Talipapa, Quezon City

Attention: **Emie Mandia**
VP-Accounting

Madam:

This refers to your letter dated October 22, 2020 requesting on behalf of Ansi Corporation for a legal opinion on whether MONK FRUIT and ERYTHRITOL, which you claim are natural sweeteners, are exempt from excise tax.

In response, please be informed that Section 150-B (A), (B), and (C) of the National Internal Revenue Code of 1997, as amended, states:

"Sec. 150-B. Sweetened Beverages -

(A) Rate and Base of Tax. - Effective January 1, 2018:

(1) A tax of Six pesos (₱6.00) per liter of volume capacity shall be levied, assessed, and collected on sweetened beverages using purely caloric sweeteners, and purely non-caloric sweeteners, or a mix of caloric and non-caloric sweeteners: Provided, That this tax rate shall not apply to sweetened beverages using high fructose corn syrup: Provided, further, That sweetened beverages using purely **coconut sap sugar and purely steviol glycosides** shall be exempt from this tax; and

(2) A tax of Twelve pesos (₱12.00) per liter of volume capacity shall be levied, assessed, and collected on sweetened beverages using purely high fructose corn syrup or in combination with any caloric or non-caloric sweetener.

(B) Definition of Terms. - As used in this Act:

(1) Sweetened beverages (SBs) refer to non-alcoholic beverages of any constitution (liquid, powder, or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration (FDA) standards, **that contain caloric and/or non-caloric sweeteners** added by the manufacturers, and shall include, but not be limited to the following, as described in the Food Category System from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest) as adopted by the FDA:

(a) Sweetened juice drinks;
(b) Sweetened tea;
(c) All carbonated beverages;
(d) Flavored water;
(e) Energy and sports drinks;
(f) Other powdered drinks not classified as milk, juice, tea, and coffee;
(g) Cereal and grain beverages; and
(h) Other non-alcoholic beverages that contain added sugar.

(2) Caloric sweetener refers to a substance that is sweet and includes sucrose, fructose, and glucose that produces a certain sweetness;

(3) High fructose corn syrup refers to a sweet saccharide mixture containing fructose and glucose which is derived from corn and added to provide sweetness to beverages, and which includes other similar fructose syrup preparations; and

(4) Non-caloric sweetener refers to a substance that are artificially or chemically processed that produces a certain sweetness. These are substances which can be directly added to beverages, such as aspartame, sucralose, saccharin, acesulfame, potassium, neotame, cyclamates and other non-nutritive sweeteners approved by the Codex Alimentarius and adopted by the FDA.

(C) Exclusions. - The following products, as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) as adopted by the FDA, are excluded from the scope of this Act:

(1) All milk products, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk and flavored milk, fermented milk, soymilk, and flavored soymilk;

(2) One Hundred Percent (100%) Natural Fruit Juices - Original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice that do not have added sugar or caloric sweetener;

(3) One Hundred Percent (100%) Natural Vegetable Juices - Original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice that do not have added sugar or caloric sweetener;

(4) Meal Replacement and Medically Indicated Beverages - Any liquid or powder drink/product for oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or as a source of necessary nutrition used due to a medical condition and an oral electrolyte solution for infants and children formulated to prevent dehydration due to illness; and

(5) Ground coffee, instant soluble coffee, and pre-packaged powdered coffee products.

xxx xxx xxx" (Emphasis and underscoring provided)

A close scrutiny of the above-quoted provision shows that only sweetened beverages using purely **coconut sap sugar** and purely **steviol glycosides** are exempt from excise tax. Only coconut sap sugar and steviol glycosides were singled out and indicated as exempt. There are no such words as "includes", "shall include, but not be limited", or "such as" that can make the provision ambiguous. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[1]

Moreover, while one can argue that the processing of MONK FRUIT and ERYTHRITOL is neither artificial nor include chemicals, and they should therefore not be considered non-caloric sweeteners, by definition, they can still fall under caloric sweetener which refers to a substance that is sweet. The enumeration after the word "includes" is not

[1] Bolos v. Bolos, G.R. No. 186400, October 20, 2010 citing Amores v. House of Representatives Electoral Tribunal, G.R. No. 189600, June 29,2010, and Twin Ace Holdings Corporation v. Rufina and Company, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376.

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limited to the ones listed, which are just examples. Neither does the definition qualify sweeteners that are natural, as the term is "caloric sweetener", and not "caloric natural sweetener".

Furthermore, neither MONK FRUIT nor ERYTHRITOL is included under Section 150-B (C) of the Tax Code.

The Supreme Court has laid down the rule that as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied.[2]

More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer.[3] Tax exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions.[4]

Evidently, a tax exemption may only be granted if there is clear legal basis for providing it. In this instant case, MONK FRUIT and ERYTHRITOL may arguably be in the same classification as stevia and coco sugar, in the sense that they are "natural" sweeteners; unfortunately, the law is clear – only stevia and coco sugar were singled out as exempt. Thus, MONK FRUIT and ERYTHRITOL are not exempt from excise tax and are therefore taxable.

Please be guided accordingly.

CAESAR R. DULAY
Commissioner of Internal Revenue

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[2] Floro Cement v. Gorospe, G.R. No. L-46787 [1991].

[3] Acting Commissioner of Customs v. Manila Electric Co., et al., 69 SCRA 469 [1977] and Commissioner of Internal Revenue v. P.J. Kiener Co. Ltd., et al., 65 SCRA 142 [1975].

[4] National Power Corporation v. Albay, G.R. No. 87479 (1990).