REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 39(a)(1) PD 269
BIR Ruling No. 170-14
OT-367-2021
OCT 04 2021

SAMAR II ELECTRIC COOPERATIVE, INC.
Brgy. Arado
Paranas, Samar

Attention: **Joey L. Talon, CPA**
General Manager

Gentlemen:

This refers to your letter dated January 30, 2017 requesting for a confirmatory ruling on the exemption of Samar II Electric Cooperative, Inc. pursuant to Presidential Decree (PD) No. 269.

It is represented that Samar II Electric Cooperative, Inc. (Samar II for brevity) (TIN: 00) was registered with the National Electrictrification Administration (NEA) on August 23, 1975.

In reply, please be informed that support from PD No. 269 for tax exemption, holds no water. Section 39 of PD No. 269 states that:

"Section 39. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

> *(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: Provided, That the Board of Administrators shall, after*

consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree."

This provision of PD No. 269 has been successively modified commencing on the issuance of PD No. 1955 by then President Ferdinand E. Marcos on October 10, 1984 which withdrew the tax exemptions of PD No. 269. Subsequently, then President Ferdinand E. Marcos issued PD No. 2008 requiring the Ministry of Finance to immediately restore the tax exemption of all electric cooperatives. However, in December of 1986, then President Corazon C. Aquino issued Executive Order (EO) No. 93 which withdrew all tax exemptions granted to private entities starting March 10, 1987. The implementation was nevertheless suspended by virtue of Memorandum Order No. 65 until June 30, 1987 for cooperatives. On July 1, 1987, through Fiscal Incentives Resolution Board (FIRB) No. 24-87 restored the tax and duty privileges of electric cooperatives under PD No. 269, *viz*:

> "BE IT RESOLVED, as it hereby resolved, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefore and declaring a national policy objective for the total electrification of the Philippines on an area coverage basis; the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, are restored effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other similar arrangements shall remain taxable: Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment.
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> (SGD) JAIME V. ONGPIN
> Secretary of Finance
> Chairman, FIRB

In the case of *Ernesto M. Maceda vs. Hon. Catalino Macaraig, Jr., in his capacity as Executive Secretary, Office of the President, Hon. Vicente Jayme, etc., et al.*[1], where the Supreme Court, sitting *en banc*, clarified issues relative to the restoration of the FIRB of the tax exemption privileges of NPC after being withdrawn under EO No. 93 (S'86) issued by President Aquino. Its Section 2 allowed the NPC to apply for the restoration of its tax exemption privileges. The same was granted under FIRB Resolution No. 17-87 dated June 24, 1987 which restored NPC's tax exemption privileges effective starting March 10, 1987, the date of effectivity of EO No. 93 (S'86). The Supreme Court held:

[1] G.R. No. 88291, May 31, 1991

"It should be noted that NPC was not asking to be granted tax exemption privileges for the first time. It was just asking that its tax exemption privileges be restored. It is for these reasons that, at least in NPC's case, the recommendation and approval of NPC's tax exemption privileges under FIRB Resolution Nos. 10-85 and 1-86, done by the same person acting in his dual capacities as Chairman of the Fiscal Incentives Review Board and Minister of Finance, respectively, do not violate procedural due process. While as above-mentioned, FIRB Resolution No. 17-87 was approved by President Aquino on October 5, 1987, the view has been expressed that President Aquino, at least with regard to E.O. 93 (S'86), had no authority to sub-delegate to the FIRB, which was allegedly not a delegate of the legislature, the power delegated to her thereunder.

A misconception must be cleared up.

When E.O. No. 93 (S'86) was issued, President Aquino was exercising both Executive and Legislative powers. Thus, there was no power delegated to her, rather it was she who was delegating her power. She delegated it to the FIRB, which, for purposes of E.O. No. 93 (S'86), is a delegate of the legislature. Clearly, she was not sub-delegating her power.

And E.O. No. 93 (S'86), as a delegating law, was complete in itself — it set forth the policy to be carried out and it fixed the standard to which the delegate had to conform in the performance of his functions, both qualities having been enunciated by this Court in Pelaez vs. Auditor General."

Along these lines, the Supreme Court, in the case of *Davao Oriental Electric Cooperative, Inc. vs. The Province of Davao Oriental*[2], recognized the validity of FIRB Resolution No. 24-87 in settling the issue of whether or not the restoration of the tax exemption under FIRB Resolution No. 24-87 was not retroactive to the date of effectivity of PD No. 1955:

"First, we resolve the issue of retroactivity of FIRB Resolution No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB Resolution No. 24-87 is crystal clear in stating that "the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 . . . are restored effective July 1, 1987." There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says."

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[2] G.R. No. 170901. January 20, 2009.

Inasmuch as the FIRB Resolution No. 24-87 issued on June 14, 1987, which, however, expressly provides that "income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable", thus, restoring the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD No. 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of EO No. 93 which has been declared as a valid delegation of legislative power pursuant to the *Maceda* case, there is no question that an electric cooperative established under PD No. 269 is entitled to the tax exemption privileges subject to the conditions stated in the FIRB Resolution.

Accordingly, this Office opines that Samar II's income from its electric service operations is subject to income tax. Beginning January 1, 2006, however, Samar II is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended on December 31, 2005, the thirtieth full calendar year after the date of the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing, whichever event comes first.[3]

Moreover, all Electric Cooperatives registered with the NEA, shall be subject to the following:

1. 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;

2. 15% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system;

3. Capital Gains Tax on sales or exchanges of real property classified as capital assets and on sale, exchange and other disposition of shares of stock except shares sold or disposed of through the stock exchange;

4. Documentary stamp taxes on transactions of cooperatives dealing with non-members, except transactions with banks and insurance companies, Provided that whenever one party to the taxable document enjoys the exemption from DST, the other party who is not exempt shall be the one directly liable for the tax;

5. VAT billed on purchases of goods and services;

6. All other taxes for which the ECs are not otherwise expressly exempted by any law.

Upon the effectivity of Republic Act (RA) No. 9337, the exemption from VAT of electric cooperatives was removed. Consequently, Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, particularly Section 4.108-2 (13) and Section 4.108-3 (f) provide that sales of electricity by generation, transmission, and/or distribution companies are now subject to 12% VAT on their gross receipts. Provided, however, that sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass,

[3] BIR Ruling No. 398-2013, November 4 2013

solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

Therefore, electric cooperatives are now subject to VAT on their gross receipts pursuant to RA 9337, as implemented by RR No. 16-2005, as amended.

It should be noted that nothing in the aforesaid Revenue Memorandum Circular (RMC) No. 72-2003 or RR No. 20-2001 shall preclude the examination of the books of accounts or other accounting records of Samar II by duly authorized internal revenue officers for internal revenue tax purposes only.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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