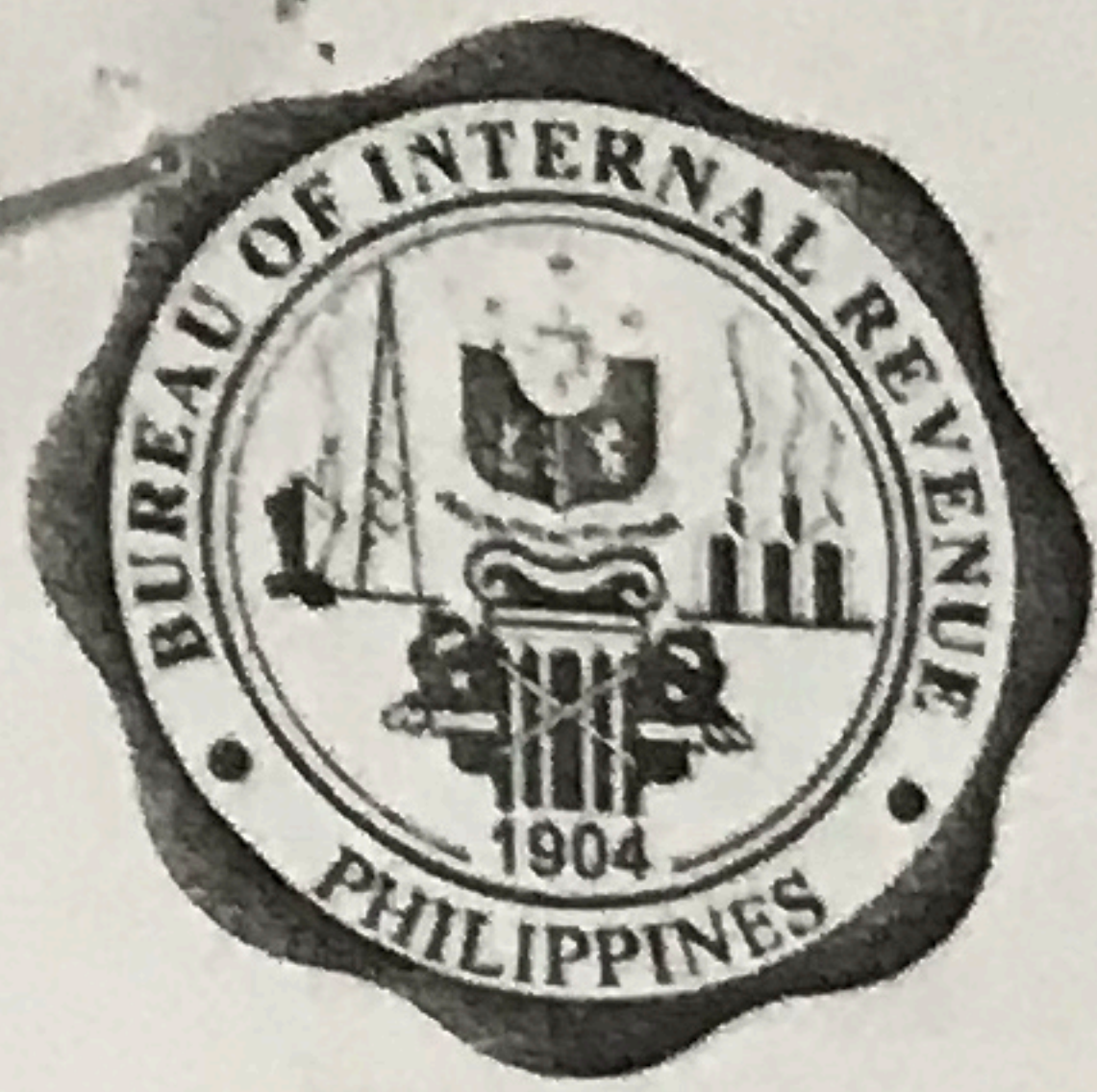




REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 39 & 106(B)(1)	000-00	VAT - 0331 - 2020
------------------------	--------	----------------------

Person to Contact: Chief, Law & Legislative Division
Tel Nos. 926-55-36/927-09-63

Date: JUN 16 2020

Reyes Tacandong & Co.
Citibank Tower
8741 Paseo de Roxas
Makati City 1226

Attention: **Atty. Rafael Vinzon**
Tax Services

Gentlemen:

This refers to your letter dated April 11, 2017 requesting on behalf of your client, **Total Philippines Corporation** for confirmation of your opinion that:

- 1) Pursuant to the Deed of Sale executed between Total Philippines Corporation with Filoil Energy Company, the sale of the service gas stations is subject to value-added tax, it being a transaction deemed sale under Section 106 (B)(1) of the National Internal Revenue Code of 1997, as amended; and
- 2) The assignment of goodwill is not subject to VAT as it is an assignment of a capital asset.

As represented, **Total Philippines Corporation** is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with registered address at 7th Floor, 11th Corporate Center, 11th Avenue corner Triangle Drive, North Bonifacio, Bonifacio Global City, Taguig City.

On July 8, 2016,¹ Total Philippines Corporation and Filoil Energy Company executed a Deed of Absolute Sale covering the following service stations:

Station Name	Station Address	Market Value in Pesos
Calasiao, Pangasinan	National Road, Mancup, Calasiao, Pangasinan, (Galaxi-Calasiao)	
Malasiqui	Malasiqui, Pangasinan	
San Manuel, Pangasinan	San Manuel, Pangasinan	
FBT – Abulug	Brgy. Libertad, Abulog, Cagayan	
FBT – Buguey	Brgy. Pattao, Buguey, Cagayan	
FBT – Solana	Brgy. Lingu, Solana, Cagayan	
FBT – Bayombong	Luyang, Bayombong, Nueva Vizcaya	
FBT – Solano	Pobalacion North, Solano, Nueva Vizcaya	
FBT – Cabatuan	Brgy. Diamantina, Cabatuan, Isabela	
FBT – Jones	Brgy. 1, Jones, Isabela	

¹ Amended on January 18, 2017 to reflect the updated purchase price

Station Name	Station Address	Market Value in Pesos
Balanga – Roman Hi-way	Roman National Highway, Brgy. Tuyo, Balanga, Bataan	
CABCABEN	Cabcaben, Mariveles, Bataan	
Cabcaben 2	National Road, Cabcaben, Mariveles, Bataan	
FBT – Abucay	Wakas Capitangan Abucay, Bataan	
FBT – Bagac	Brgy. Poblacion, Bagac, Bataan	
FBT – Limay	P. Enriquez St. cor. National Road, Brgy. Townsite, Limay, Bataan	
FBT –Orani	Brgy. Tugatog, Orani, Bataan	
FBT –Palihan	Brgy. Palihan, Hermosa, Bataan	
FBT – Pilar, Bataan	Brgy. Poblacion, Pilar, Bataan (Alauli)	
FBT – Samal	Sta. Lucia, Samal, Bataan	
Orani	Brgy. Apollo, Orani, Bataan	
General Luis	3106 Sto. Rosario St., Purok 3, Mapulang Lupa, Valenzuela City	
Camarin	Ilang-ilang St., Cor. Magnolia, Camarin, Caloocan City	
Sta. Mesa	4872 Old Sta. Mesa Road, Sta. Mesa, Manila (CityOil-Sta. Mesa)	
FBT – San Agustin	Dubduban, San Agustin, Romblon	
Brooke's Point	Brooke's Point, Palawan	
Culion	Culion, Palawan	
FBT – Dumarán	Brgy. Sta. Teresita, Dumarán, Palawan	
FBT – Quezon	Quezon, Palawan	
FBT – San Vicente	Poblacio, San Vicente, Palawan	
FBT –Taytay Abongan	Brgy. Abongan, Taytay, Palawan	
FBT – Taytay Rotunda	Poblacion, Taytay, Palawan	
Irawan	Purok Pag-Asa, Irawan, Puerto Princesa, Palawan	
Puerto Princesa	Brgy. Tiniguiban, Puerto Princesa, Palawan	
Sta. Lourdes	Brgy. Sta. Lourdes, Puerto Princesa City, Palawan	
Sta. Monica	National Hi-way, Brgy. Sta. Monica, Puerto Princesa City, Palawan	
Tiniguiban	National Hi-way, Brgy. Tiniguiban, Puerto Princesa City, Palawan	
FBT - Caminawit	Caminawit, Bubog, San Jose, Occidental Mindoro	
FBT – Central	Central, San Jose, Occidental Mindoro	
FBT – Labangan	Labangan, San Jose, Mindoro Occidental	
FBT – Ligaya	Ligaya, Sablayan, Occidental Mindoro	
Rizal, Occ. Min.	Rizal St., San Jose, Occidental Mindoro	
Barangka	1 A. Bonifacio Ave. Cor. Marcos Highway, Barangka, Marikina City	
JP Rizal	J.P. Rizal Street, Malanday, Marikina City	
Malinta	Brgy. Paso De Blas, Valenzuela City	
Cainta	A. Bonifacio Ave., Brgy. San Juan, Cainta Rizal	
FBT – Rodriguez	Sitio Harangan, San Isidro, Rodriguez, Rizal	
FBT – San Mateo	Gen. Luna St., Banaba, San Mateo, Rizal	

Station Name	Station Address	Market Value in Pesos
L. Wood.	163 L. Wood St., Dolores, Taytay, Rizal 1920	
Morong	San Pedro, Morong, Rizal	
Tanay	F.T. Catapusan St., Brgy. Plaza Aldea, Tanay, Rizal	
Taytay – Hiway 2000	Hi-way 2000, Batong Dalig, San Juan, Taytay, Rizal	
Taytay – Rizal Ave.	J.P. Rizal Street, San Juan, Taytay Rizal	
FBT – Pagsanjan	Sampaloc, Pagsanjan, Laguna	
FBT – Pangil	Brgy. Isla, Pangil, Laguna	
FBT – Victoria	Brgy. Masapang, Victoria, Laguna	
Calaca	Expired Shell, Calaca, Batangas	
FBT – Lemery	Ilustre Ave., Brgy. Palanas, Lemery, Batangas	
Gulod	Brgy. Gulod, Labac, Batangas City, Batangas	
Lemery	Ex-Caltex, Lemery, Batangas	
Nasugbu- Pob.	F. Castro Street, Poblacion, Nasugbu, Batangas	
Nasugbu – Wawa	Brgy. Wawa, Nasugbu, Batangas	
Sta. Clara	Sta. Clara, Batangas City, Batangas	
Darasa	Darasa, Tanauan, Batangas	
Lipa City	National Road, Brgy. Banay-Banay, Lipa City, Batangas	
Suplang	Plantation Hills, Brgy. Suplang, Tanauan, Batangas	
FBT – Boac	Brgy. Santol, Boac, Marinduque	
FBT - Buenavista	Sitio Putat, Caigangan, Buenavista, Marinduque	
FBT – Mogpog	Market Site, Poblacio, Mogpog, Marinduque	
FBT – Sta Cruz 1	Brgy. Manlibunan, Sta. Cruz, Marinduque	
Gasán	Brgy. Uno, Gasan, Marinduque	
Sta. Cruz Pob.	Maharlika, Sta. Cruz, Marinduque	
Torrijos	Poblacion, Torrijos, Marinduque	
Baco	Poblacion, Baco, Oriental Mindoro	
Bongabong	Brgy. Bagong Bayan, Bongabong, Oriental Mindoro	
Bongabong 2	Brgy. Kaligtasan, Bongabong, Oriental Mindoro	
Calapan	Brgy. Bayanan I, Calapan City ,Oriental Mindoro	
FBT – Calapan	Calapan City	
FBT – Puerto Galera	Brgy. Minolo, Puerto Galera I, Oriental Mindoro	
FBT – Socorro	Brgy. Catiningan, Socorro, Oriental Mindoro	
Roxas, Oriental Mindoro	Brgy. Sta. Fe, Roxas, Oriental Mindoro	
FBT – Pili	New San Roque, Pili, Camarines Sur	
FBT – Tabaco	Brgy. San Lorenzo, Tabaco, Albay	
Legazpi	Cabangan West, Legazpi, Albay	
FBT – Aroroy Luy-a	Brgy. Luy-A, Aroroy, Masbate	
FBT – Cataingan	Brgy. Poblacion, Cataingan, Masbate	
FBT – Cawayan	Brgy. Mahayahay, Cawayan, Masbate	

Station Name	Station Address	Market Value in Pesos
FBT – Palanas	Brgy. Nabangig Palanas, Masbate	
FBT – Pio V. Corpuz	Brgy. Manaay, Pio Y Corpuz, Masbate	
FBT – Umabay	Brgy. Umabay Exterior, Mobo, Masbate	
FBT – Uson	Brgy. Buenavista, Uson, Masbate	
Pinamarbuan	Brgy. Pinamarbuan, Mobo, Masbate	
Ticao	Calipat-an, San Jacinto, Masbate	
FBT – Kalibo Terminal	Oyo Torong Extn., Bachao/Bacjao Sur, Kalibo, Aklan	
FBT – Cagay	Brgy. Cagay, Roxas City, Capiz	
Atabay	Atabay, San Jose, Antique	
FBT – Belison	Brgy. Poblacion, Belison, Antique	
FBT – Hamtic	Brgy. Calala, Hamtic, Antique	
FBT – Pandan	Brgy. Nauring, Pandan, Antique	
FBT – Patnongon	Brgy. Apgahan, Patnongon, Antique	
FBT – San Angel	San Angel, San Jose, Antique	
FBT – San Remigio	Iverson Road, Poblacion, San Remigio, Antique	
FBT – Sibalom 1	District 01 Poblacion Sibalom, Antique	
FBT – Sibalom 2	Cubay, Napultan, Sibalom, Antique	
FBT – Tibiao	Malabor, Tibiao, Antique	
FBT – Jordan	Rizal, Jordan, Guimaras	
FBT – Pina	Brgy. Pina, Buenavista, Guimaras	
FBT – Batad	Pablacion, Batad, Iloilo	
FBT – Lambunao	Poblacion Ilawod, Lambunao, Iloilo	
FBT – Mina	Cabalabaguan, Mina, Iloilo	
FBT – Pototan	F. Parcon St., Pototan, Iloilo	
Cadiz	Cabahug St., Brgy. Zone 5, Cadiz City, Negros Occidental	
Escalante	Old Poblacion, Escalante, Negros Occidental	
FBT – Cadiz	Brgy. Caduha-an, Cadiz City, Negros Occidental	
Manapla	Purok Suhaga, Brgy. I-A Manapla, Negros Occidental	
Sagay	Brgy. Paraiso, Sagay, Negros Occidental	
Bacolod – Magsaysay	Magsaysay St., Brgy Zone 6, Talisay City, Negros Occidental	
FBT – Murcia	Brgy. Salvacion Murcia, Negros Occidental	
Gatuslao	Gatuslao St., Bacolod City, Negros Occidental	
Gonzaga	Gonzaga cor. Mabini St., Brgy. 24, Bacolod City, Negros Occidental	
Libertad	Cor. Smith Locsin-Libertad Streets, Bacolod City, Negros Occidental	
Luzuriaga	Brgy. 13, Luzuriaga St., Reclamation Area, Bacolod City, Negros Occidental	
Mansilingan	Mansilingan, Bangga Pare, Bacolod City, Negros Occidental	
Hinigaran	Hinigaran, Negros Occidental	
La Carlota	Cor. Yunque-Gurrea Streets, La Carlota City, Negros Occidental	
Bagacay	Brgy. Bacagay, Dumaguete City, Negros Oriental	

Station Name	Station Address	Market Value in Pesos
FBT – Amlan 1	National Highway, Mag-abo, Amlan, Negros Oriental	
FBT – Amlan 2	Filoil Depot, Amlan, Negros Oriental	
FBT – Bacong	Banilad, Bacong, Negros Oriental	
FBT – Batinguel	Crossing Taclobo, Lower Batinguel, Dumaguete, Negros Oriental	
FBT – Jimalalud	North Poblacion, Jimalalud, Negros Oriental	
FBT – Manjuyod	Suba Manjuyod, Negros Oriental	
FBT – Perdices	Perdices St., Calindagan, Dumaguete City	
Looc	Brgy. Piapi, Looc, Dumaguete, Negros Oriental	
Taclobo	(HMT Dumaguete City)	
Valencia	Trenz, Valencia City, Negros Oriental	
FBT – Daan Bantayan	Tapilon, Daan Bantayan, Cebu	
Liloan	Nat'l Highway, Brgy. Yati, Liloan, Cebu	
Mandaue	Subang Daku, Mandaue, Cebu	
FBT – Alcantara	Poblacion, Alcantara, Cebu	
Bien Unido	Brgy. Nueva Esperanza, Bien Unido, Bohol	
Catigbian	Catigbian, Bohol	
FBT – Bilar	Cansumbol, Bilar, Bohol	
FBT – Dauis	Brgy. Mariveles, Dauis, Bohol	
FBT – Guindulman	Brgy. Tabajan, Guindulman, Bohol	
FBT – Jagna	Brgy. Looc, Jagna, Bohol	
FBT – Panglao	Brgy. Tawala, Panglao, Bohol	
FBT – Pilar Bohol	Brgy. Poblacion, Pilar, Bohol	
FBT – Talibon 1	San Isidro, Talibon, Bohol	
FBT – Talibon 2	Poblacion, Talibon, Bohol	
Loay	Poblacion Ibabao, Loay, Bohol	
Tagbilaran	Dampas, Tagbilaran City, Bohol	
FBT – Alang-alang	Brgy. Bunol Alangalang, Leyte	
FBT – Burayan	Brgy. 83, Burayan, San Jose, Tacloban City, Leyte	
FBT – Jaro	Macopa, Jaro, Leyte	
FBT – Tolosa	Brgy. Doña Brigida, Tolosa, Leyte	
Tacloban	Brgy. 92, Apitong, Tacloban City, Leyte	
FBT – Isabel	Sto. Niño, Isabel, Leyte	
FBT – Bontoc	Brgy. Divisoria, Botoc, Southern Leyte	
FBT - Sogod	Zone 1, Sogod, Southern Leyte	
FBT - Bacolor	Cabambangan, Bacolor, Pampanga	
FBT – Lubao	San Nicolas 1 st , Lubao, Pampanga	
Lubao – San Roque	San Roque Arbol, Lubao, Pampanga	
Aliaga	Poblacion West III, Aliaga, Nueva Ecija	
Talavera	National Road, Talavera, Nueva Ecija	
FBT – Gapan	Sta. Cruz, Gapan, Nueva Ecija	
Sta. Rosa	National Road, Sta. Rosa, Nueva Ecija	
Bocaue	Eusebio Roque Ave., Caingin, Bocaue, Bulacan	
FBT – Guiguinto	Cagayan Valley Road, Sta. Rita, Guiguinto, Bulacan	
TAMBOBONG	Bocaue, Bulacan	

Station Name	Station Address	Market Value in Pesos
FBT – Carriedo	Carriedo, Muzon, San Jose Del Monte, Bulacan	
FBT – Dulong Bayan	Dulong Bayan (Karyapay), SJDM, Bulacan	
FBT – Prenza	Prenza 1, Marilao, Bulacan	
FBT – San Rafael 1	Brgy. Cruz na Daan, San Rafael, Bulacan	
FBT – San Rafael 2	Pantubig, San Rafael, Bulacan	
FBT – Sta. Maria 1	Matimyas St., Sta. Cruz, Sta. Maria, Bulacan	
Sta. Maria 3	Bagbaguin, Sta. Maria, Bulacan	
FBT – Bagong Ilog	Corner Pasig Blvd. & Sgt. Pascua Streets, Bagong Ilog, Pasig City	
Shaw	Pasig Blvd, Brgy. Pineda, Pasig City	
Eusebio	Lit. A Eusebio Ave., San Miguel, Pasig City 1600	
Manggahan	Amang Rodriguez Avenue, Manggahan, Pasig City	
Velasco	111 Urbano Velasco Avenue, Pinagbuhatan, Pasig City	
FBT – Area 1	Brgy Sta. Lucia, Dasmariñas, Cavite	
FBT – Bulihan	B42 L18 Brgy. Acacia, Bulihan, Silang, Cavite	
FBT – GMA	Palawan Cor. Visayas Aves., Maderan, GMA, Cavite	
GMA	GMA Cavite	
Gen. Trias – Priza	Bonifacio St., Brgy. Priza, General Trias, Cavite	
Molino	Jomil Bldg. Rd Molino IV, Bacoar, Cavite 4102	
Sta. Maria 2	Gov. Halili Ave., Brgy. Parada, Sta. Maria, Bulacan	-
San Nicolas 1	Brgy. 22, San Guillermo, San Nicolas, Ilocos Norte	-
San Nicolas 2	23, Sta. Cecilia, San Nicolas 2, Ilocos Norte	-
Buenavista	Caigangan Buenavista, Marinduque	-
Liboro	Liboro St. Brgy. Pag-asa, San Jose, Occidental Mindoro	-
Payompon	Brgy. Payompon, Mamburao, Occidental Mindoro	-
FBT – Calindagan	Brgy. Calindagan, Dumaguete City, Negros Oriental	-
Rizal, Palawan	Punta Baja, Rizal, Palawan	-
Bubog	Bubog, Guimaras	-
Magsaysay	Tabuk, Kalinga	-
SJC - Poblacion	Rizal St. Barangay 1 (Pob.), San Jose, Mindoro Occidental, Philippines	-
TOTAL MARKET VALUE		

As a result of the sale of the service stations, the business of Filoil Energy Company was effectively transferred to TOTAL PHILIPPINES CORPORATION, which necessarily included the goodwill that was acquired during the operation and management of Filoil Energy Company.

In reply, please be informed as follows:

Goodwill is a capital asset only on the part of Total Philippines Corporation.

As enunciated in *WM H. Anderson vs. Juan Posadas, Jr.*, G.R. No. 44100, September 22, 1938, viz:

"The phrase 'good will' is defined in 28 Corpus Juris, 729, section 1, as follows:

Goodwill may be defined to be the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital stock, funds, or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity or reputation for skill, affluence, punctuality, or from other accidental circumstances or necessities, or even from accident partialities or prejudices. . . .

According to the above-quoted definition, good will is the reputation of good name of an establishment. If the good will, that is, the good reputation of the business is acquired in the course of its management and operation, it does form part of the capital with which it was established. It is an intangible moral profit, susceptible of valuation in money, acquired by the business by reason of the confidence reposed in it by the public, due to the efficiency and honesty shown by the manager and personnel thereof in conducting the same on account of the courtesy accorded its customers, which moral profit, once it is valuated and used, becomes a part of the assets."

This Office agrees that goodwill forms part of the capital with which it was established and once it is valuated and used, becomes a part of the assets. The Office further agrees that goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized [Philippine Financial Reporting Standards 3 (Revised)]. It is an intangible asset which cannot exist independently of the business. It cannot be sold, purchased or transferred separately without carrying out the same transactions for the business as a whole. **Goodwill is tagged to a company or business and cannot be sold or purchased independently.**

Thus, on the part of the seller, Filoil Energy Company, the amount paid for "goodwill" is part and parcel of the selling price. This is consistent with Philippine Financial Reporting Standards 3 (Revised) that goodwill is tagged to a company or business (which is an ongoing concern) and cannot be sold or purchased independently.

A capital asset is defined negatively in Section 39 (A) (1) of the National Internal Revenue Code (NIRC) of 1997, as amended and as implemented by Section 2 (a) of Revenue Regulations (RR) No. 7-2003:

"SECTION 39. Capital Gains and Losses. —

(A) Definitions. — As used in this Title —

(1) Capital Assets. — The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer."

Therefore, on the part of the purchaser, Total Philippines Corporation, goodwill is a capital asset since (1) it is not included in stock in trade which would properly be included in the inventory at the close of the taxable year, (2) it is not held primarily for sale to customers in the ordinary course of his trade or business, (3) it is not a property used in the trade or business, of a character which is subject to the allowance for depreciation provided in subsection (f) of Section 34 of the Tax Code, and (4) it is not a real property used in the trade or business.

The sale of the service gas stations is subject to VAT under Section 105 of the Tax Code of 1997, as amended.

Section 105 of the National Internal Revenue Code of 1997, as amended, provides —

"SEC. 105. Persons Liable. — Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

xxx

xxx

xxx

The phrase "in the course of trade or business" means regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

xxx

xxx

xxx"

In relation thereto, Section 14 (B) (p) (1), RR 4-2007 states –

“Section 14. VAT-EXEMPT TRANSACTIONS. - Sec. 4.109-1(B)(1) of RR No. 16-2005 is hereby amended to read as follows:

“SEC. 4.109-1. VAT-Exempt Transactions.- Xxx xxx xxx. (B) Exempt transactions . – Subject to the provisions of Sec. 4.109-2 hereof, the following transactions shall be exempt from VAT:

X X X X X X X X X

(p) The following sales of real properties are exempt from VAT, namely: (1) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business. However, even if the real property is not primarily held for sale to customers or held for lease in the ordinary course of trade or business but the same is used in the trade or business of the seller, the sale thereof shall be subject to VAT being a transaction incidental to the taxpayer's main business.”

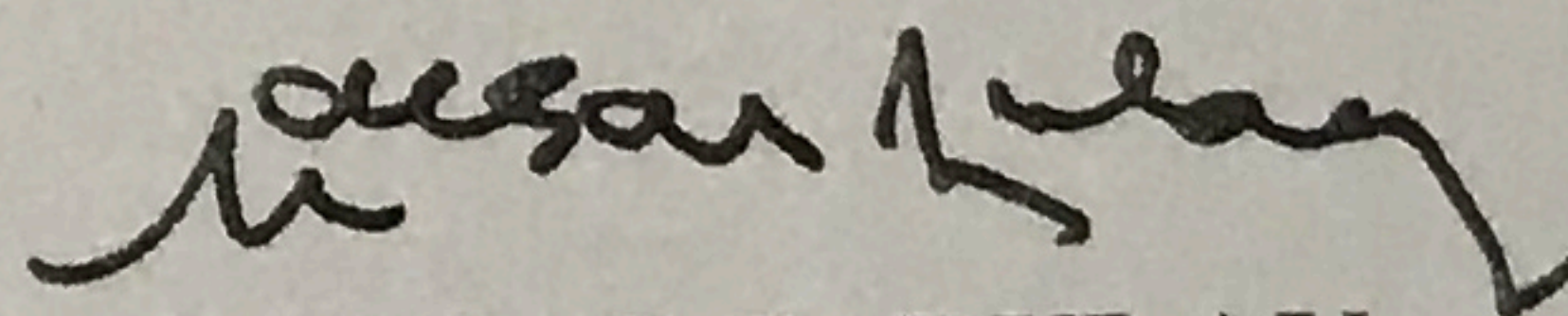
The service gas stations, although not primarily held for sale or lease to customers, are ordinary assets used by Filoil Energy Company in its ordinary course of business.

Applying Section 105 of the Tax Code of 1997, as amended, in relation to Section 14 (B) (p) (1) of RR 4-2007, the sale of the service gas stations of Filoil Energy Company to Total Philippines Corporation is subject to VAT, it being a transaction incidental to the pursuit of Filoil Energy Company's commercial and economic activity.

Based on the foregoing, this Office is of the opinion that the total amount paid, including the amount pertaining to assigned goodwill, by Total Philippines Corporation to Filoil Energy Company is subject to VAT pursuant to Section 105 of the 1997 Tax Code, as amended.

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

Very truly yours,



CAESAR R. DULAY
Commissioner of Internal Revenue

034308

K-1