REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sections 144, 145 and 147 NIRC		#032-2018

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

Date: January 23, 2018

KALALO CACHO AND ASSOCIATES LAW FIRM
Suite 710-A Globe Telecom Plaza Tower II
Pioneer cor Madison Sts., Mandaluyong City

Attention: **Dante O. Cacho**

Gentlemen:

This refers to your letter dated November 21, 2016 requesting on behalf of your client, Golden Yellow Leaf Mfg., Corp. (the "Company") for legal opinion on the following issues:

1. Whether or not the sale of cigarette tubes and loose tobaccos directly to end users/consumers is subject to excise tax; and
2. If in the affirmative, whether the excise tax shall be based on kilogram or per pack.

It is represented that the Company, with Tax Identification No. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with Company Registration No. and that the purposes for which it was organized are manufacturing, processing, packing and repacking tobacco cut rags for use in pipe tobacco, roll your own and make your own, wholesale, retail and export of tobacco, sale of related tobacco products.

In reply, please be informed that tobacco products are subject to excise tax at the rates provided under Section 144 of the 1997 Tax Code, as amended by Republic Act (RA) No. 10351, to wit:

> *"**SECTION 144. Tobacco Products.** - There shall be collected a tax of One peso (P1.75)[1] on each kilogram of the following products of tobacco:*

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[1] Effective January 1, 2014, the specific tax rate shall be increased by 4% every year thereafter as provided under RA No. 10351, implemented by RR No. 017-12 and clarified by RMC No. 003-13.

"(a) Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing;

"(b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened except as otherwise provided hereunder; and

"(c) Fine-cut shorts and refuse, scraps, clippings, cuttings, stems and sweepings of tobacco except as otherwise provided hereunder.

"Stemmed leaf tobacco, tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened, fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs, and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco shall be transferred, disposed of, or otherwise sold, without any prepayment of the excise tax herein provided for, if the same are to be exported or to be used in the manufacture of cigars, cigarettes, or other tobacco products on which the excise tax will eventually be paid on the finished products, under such conditions as may be prescribed in the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

"On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, One Peso and fifty centavos (P1.50) effective on January 1, 2013."

Please note that only tobacco products enumerated above are subject to excise tax. An empty cigarette tube, without any tobacco or substitute smoking material in it, is not covered by the above-quoted provision. Likewise, an empty cigarette tube does not qualify as cigarette or cigar that is subject to excise tax under Section 145 of the 1997 Tax Code, as amended. Section 147 of the same Code defines cigars and cigarettes as follows:

"SECTION 147. Definition of Terms. - When used herein and in statements or official forms prescribed hereunder, the following terms shall have the meaning indicated:

"(a) 'Cigars' mean all rolls of tobacco or any substitute thereof, wrapped in leaf tobacco.

"(b) 'Cigarettes' mean all rolls of finely-cut leaf tobacco, or any substitute therefor, wrapped in paper or in any other material."

Based on the foregoing, the sale of empty cigarette tube, without any tobacco or substitute smoking material in it, is not subject to excise tax.

As regards loose tobacco, the general rule is that it is subject to excise tax as provided under Section 144 of the 1997 Tax Code, as amended. The only instance that such loose tobacco will not be subject to excise tax is when the same is exported or used in the manufacture of cigars, cigarettes, or other tobacco products on which the excise tax will eventually be paid on the finished products. In the instant case, it was represented that the loose tobacco shall be sold directly to end users/consumers, thus, the general rule shall apply. Therefore, the sale of loose tobacco directly to end users/consumers is subject to excise tax at the rate of One peso and seventy-five centavos (P1.75) on each kilogram pursuant to Section 144 of the 1997 Tax Code, as amended.

It is emphasized, however, that while the cigarette tube is not subject to excise tax as discussed above, the same may be considered a regulated raw material if made of cigarette paper pursuant to Section 260 of the 1997 Tax Code, as amended, to wit:

> *"Sec. 260. Unlawful Possession of Cigarette Paper in Bobbins or Rolls, etc.- It shall be unlawful for any person to have in his possession cigarette paper in bobbins or rolls, cigarette tipping paper or cigarette filter tips, without the corresponding authority therefor issued by the Commissioner. xxx"*

Moreover, Section 154 of the same Code provides:

> *"Sec. 154. Premises Subject to Approval by Commissioner.- No person shall engage in business as manufacturer of or dealer in articles subject to excise tax unless the premises upon which the business is conducted shall have been approved by the Commissioner."*

In view thereof, Golden Yellow Leaf Mfg., Corp. shall have to register with the Excise LT Regulatory Division and secure from the said Office a Permit to Operate for excise tax purposes pursuant to Section 154 of the 1997 Tax Code, as amended, as implemented by Revenue Memorandum Order No. 38-2003 dated October 24, 2003.

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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