REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

PD 1869; Secs. 109 & 27 of NIRC
BIR Ruling No. 1090-18
OT-0385-2020
JUL 16 2020

BANIQUED LAYUG & BELLO
8/F Jollibee Center, San Miguel Avenue
Ortigas Center, Pasig City

Attention: **Attys. Suzette A. Celicious- Sy**
Kathleen Mae M. Villamin
Ana Margaret T. Dahilig

Gentlemen:

This refers to your letters dated November 29, 2018 and September 4, 2019 requesting on behalf of your client, **FIRST LEISURE & GAME CO., INC. (doing business under the name and style of Balay Bingo)** (**"FIRST LEISURE"**, for brevity), for confirmation of your opinion that income derived from bingo games operations conducted by FIRST LEISURE, as a licensee of the Philippine Amusement and Gaming Corporation (PAGCOR), shall be subject to 5% franchise tax, in lieu of all kinds of taxes, pursuant to Section 13(2)(b) of Presidential Decree ("PD") No. 1869, as amended by Republic Act ("RA") No. 9487.

It is represented that FIRST LEISURE, with Tax Identification Number [redacted], is a corporation duly organized under the laws of the Philippines, the primary purpose of which is to organize, conduct and carry on the business of promoting amusement and allied activities, i.e. bingo, concerts, theater, sports, etc.; and to engage in tourism project promotion and development, i.e. recreational centers, golf clubs, etc. FIRST LEISURE is a holder of various Gaming Licenses[1] for its Bingo Games Operations which were issued by PAGCOR pursuant to PD No. 1869, as amended by RA No. 9487.

In reply, please be informed that Section 13(2) of PD No. 1869, as amended by RA No. 9487, provides, *viz*:

"***SEC. 13. Exemptions.*** *–*

(2) Income and other taxes – (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation, nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.*** *Such tax shall be due and payable*

[1] Please see attached Annex "A" for the list of Gaming Licenses issued to First Leisure

quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

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(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.*** *(Emphasis and underscoring supplied)*

In the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*,[2] the Supreme Court affirmed the applicability of the tax exemption provisions of PD No. 1869, as amended by RA No. 9487, to PAGCOR's licensees. Thus, the Supreme Court ruled that:

"As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** *corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so* ***it must be that all contractees and licensees of PAGCOR****, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.*

For the same reasons that made us conclude in the December 10, 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services," we find it logical that its contractees and licensees shall likewise pay corporate income tax for income derived from such "related services."

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Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax." (Emphasis and underscoring supplied)

With regard to the VAT exemption of FIRST LEISURE, Section 109 (1) (K) of the National Internal Revenue Code of 1997, as amended, provides:

[2] G.R. No. 212530 dated August 10, 2016.

*"**SEC. 109. Exempt Transactions.** — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:*

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*(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or **under special laws,** except those under Presidential Decree No. 529;* (Emphasis supplied)

Thus, PAGCOR and its licensees are exempt from the payment of VAT because PAGCOR's charter, PD No. 1869, is a special law that grants the latter exemption from taxes and such exemptions extend or inure to the benefit of its licensees.[3]

Premises considered, this Office hereby rules that since FIRST LEISURE is a holder of Gaming Licenses for its Bingo Games Operations issued by PAGCOR, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to FIRST LEISURE pursuant to Section 13 (2) (b) of PD No. 1869, as amended by RA No. 9487. Therefore, the income derived by FIRST LEISURE solely from its Bingo Games Operations, during the validity period of its Gaming Licenses on the specified gaming sites, is subject only to the 5% franchise tax, and shall be exempted from corporate income tax and VAT. However, for the purpose of applying the 5% franchise tax, any income that may be realized by FIRST LEISURE from related services or such services not falling under gaming operations, shall be subject to corporate income tax and VAT.[4]

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it shall 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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[3] Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, G.R. No. 172087 dated March 15, 2011.
[4] Section 14 (5) of PD No. 1869, as amended by RA No. 9487.