REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Bureau of Internal Revenue Ruling

P.D. 1869; 109; 27		#359-2017 8-9-2017

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

ATTY. LEONARD L. ESCUETA
3605 One Rockwell East Tower
Rockwell Center, Makati City

Sir:

This refers to your letter dated February 6, 2017, requesting on behalf of your client, Coast Redwood Management Solutions, Inc. ("CRMSI" for brevity), for confirmation of your opinion that:

1. The income derived by CRMSI arising from the services rendered to AG Interpacific Resources, Limited ("AGIRL"), an Offshore Gaming Licensee of the Philippine Amusement and Gaming Corporation (PAGCOR), pursuant to a Service Agreement (the "Agreement") is subject to 5% franchise tax, in lieu of all taxes, in accordance with Section 13(2)(b) of Presidential Decree (PD) No. 1869, as amended;

2. All domestic purchases of goods and services by CRMSI directly related to its gaming operation as described in the first paragraph, shall not be subject to 12% VAT on the ground of its exemption from all taxes pursuant to Section 13(2)(b) of PD No. 1869, as amended. Stated otherwise, no VAT shall be passed on to CRMSI with respect to its domestic purchase of goods and services that is directly related to its gaming operation as described in the first paragraph.

<u>Background:</u>

CRMSI is a corporation duly organized under the laws of the Philippines and is primarily engaged in providing technical and customer support services such as customer relationship, management services, data management and information processing services, software development, customer care and information technology services exclusively to 100% foreign-based and offshore clients including but not limited to those engaged in interactive gaming and sports book activities. CRMSI is a holder of multiple Certificate of Accreditation and Authority to Operate as an Online Gaming Agent and as Business Process Outsourcing pursuant to PD No. 1869, as amended by Republic Act (RA) No. 9487.

On the other hand, AGIRL is a corporation organized under the laws of British Virgin Islands and is a grantee of an Offshore Gaming License by PAGCOR effective from October 26, 2016 and is engaged in interactive online gaming, which may include, but not limited to e-casino, sports-betting, random number generation (RNG) and other activities or games of chance from internet users located outside the territory of the Republic of the Philippines.

On January 31, 2017, AGIRL and CRMSI entered into a service agreement whereby CRMSI will act as service provider to AGIRL. Specifically, the scope of service shall include performance of interactive gaming services for and on behalf of AGIRL, which includes operations and technical support services. In addition, CRMSI shall also provide additional services as may be mutually agreed in writing to be approved and registered with PAGCOR.

In consideration of the services provided by CRMSI, AGIRL agrees to pay a monthly service fee to CRMSI in US dollars.

In reply, please be informed that Section 13(2)(b) of PD No. 1869, as amended by RA 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 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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> *xxx xxx xxx*
>
> (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)

Furthermore, in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, (G.R. No. 212530 dated August 10, 2016)*, the Supreme Court unequivocally affirmed the applicability of the tax exemption provisions of PD No. 1869, as amended, to PAGCOR's licensees and the contractees. *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*

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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 supplied)

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

"***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 and contractees are exempt from the payment of VAT because PAGCOR's charter, PD 1869, is a special law that grants the latter exemption from taxes and such exemptions extend or inure to the benefit of its licensees and contractees. *(Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, G.R. No. 172087 dated March 15, 2011)*

Premises being considered, this Office hereby confirms your opinion, as follows:

1. Since AGIRL is a licensee of an offshore gaming, while CRMSI is an accredited operator as an online gaming agent and business process outsourcing, both issued by PAGCOR, the exemption from taxes, fees and charges enjoyed by PAGCOR is extended to CRMSI pursuant to Section 13(2)(b) of PD 1869, as amended. Therefore, the income derived by CRMSI from the Service Agreement with AGIRL, particularly the performance of interactive gaming services, which includes operations and technical support services, is subject only to the 5% franchise tax, and shall be exempted from the 30% corporate income tax under Section 27 of the Tax Code of 1997, as amended, and consequently to the withholding tax. However, for the purpose of applying the 5% franchise tax, any income that may be realized from related services or such services not falling under gaming operations, shall be subject to the 30% corporate income tax. *(Section 14(5) of Presidential Decree No. 1869, as amended.)*

2. All domestic purchases of goods and services and importations made by CRMSI directly related to its gaming operation as described in the first paragraph, shall not be subject to 12% VAT on the ground of its exemption from all taxes pursuant to Section 13(2)(b) of PD No. 1869, as amended. Hence, no VAT shall be passed on to CRMSI with respect to its

domestic purchase of goods and services that is directly related to its gaming operation as described in the first paragraph. *(Section 109(1)(K) of the Tax Code of 1997, as amended and (Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, G.R. No. 172087 dated March 15, 2011)*

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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