REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

E. O. No. 93; RR No. 31-03
BIR Ruling No. 310-2011
#329-2016

6-29-2016

DEPARTMENT OF NATIONAL DEFENSE
Office of the Secretary
Room 301 DND Building, Camp Gen. Emilio Aguinaldo
Quezon City 1110

Attention: **VOLTAIRE T. GAZMIN**
Secretary of National Defense

Gentlemen:

This refers to your letter dated December 22, 2014, requesting for Tax Exemption Ruling in favor of the Armed Forces of the Philippines Commissary and Exchange Service (AFPCES) pursuant to Revenue Memorandum Order (RMO) No. 20-2013.

It is represented that AFPCES (TIN: is one of the AFP-Wide Support and Separate Units (AFPWSSUs) under the command and control of the AFP General Headquarters. It was established in 1972 by virtue of Letter of Instructions (LOI) No. 31 dated October 23, 1972 issued by Ferdinand E. Marcos, authorizing the President of the Philippine Veterans Bank to set aside P5 million from the retained earnings of the Veterans Claims Settlement Fund at the disposal of the Armed Forces Ladies Cooperative Stores to be utilized for the management and operations of a commissary and exchange facilities in military establishments all over the country for the benefit of the veterans, their widows and orphans and the members of the Armed Forces of the Philippines and their dependents.

It is further represented that the AFPCES, since its start of operation, has been exempted from payment of income tax by virtue of Presidential Decree (PD) No. 83 dated December 20, 1972 and has received tax subsidy from the Fiscal Incentive and Review Board on its purchases from local sources, manufacturers, producers or suppliers of articles or commodities subject to excise tax and valued added tax (VAT) in line with Executive Order (EO) No. 93 dated December 17, 1986.

In reply, please be informed that RMO No. 20-2013 was issued to prescribe the policies and guidelines in the issuance of tax exemption rulings to qualified non-stock, non-profit corporations and associations under Section 30 of the National Internal Revenue Code (Tax Code) of 1997, as amended which exempts from income tax the income derived by the corporations and organizations described therein received by them as such.

042337

Thus, given the factual antecedents of AFPCES, it is not qualified for tax exemption under Section 30 of the Tax Code of 1997, as amended.

It is noted that AFPCES claims exemption from income tax under PD No. 83. This law, however, does not exempt AFPCES from the payment of income tax. Pertinent provision of PD No. 83 is quoted below:

> "*NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in vested by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to the Letter of Instructions cited above, do hereby promulgate and decree as part of the law of the land that* ***all purchases** from local sources, manufacturers, suppliers and producers of commodities or items decided by the AFP Exchange and Commissary Service to be sold to persons entitled to commissary and PX privileges under Letter of Instructions No. 31 dated October 23, 1972, as amended, shall be free of all taxes, duties and other charges prescribed for similar commodities or items under existing revenue and other laws and regulations.*" (Underscoring and emphasis supplied)

Clearly, the above-cited provision only exempts AFPCES from indirect taxes, such as valued-added tax (VAT) and/or excise tax that may be imposed on its purchases of local goods. The above exemption, however, does not include exemption from income tax on the proceeds of the sale of the goods to the intended beneficiaries. Moreover, PD 1955, s. 1984[1] of then President Ferdinand E. Marcos effectively withdrew the tax and duty incentives of AFPCES. EO 76 (December 2, 1986)[2] of then President Corazon C. Aquino amended PD 1955, s. 1984 by including NAFPCES among those exempted from the withdrawal of duty and tax privileges thereby restoring its incentives in 1986. However, EO No. 93[3] was issued on December 17, 1986 again withdrawing all tax and duty incentives granted to government and private entities, subject to certain exceptions, and AFPCES was not among those specifically mentioned. Fiscal Incentives Review Board (FIRB) Resolution No. 12-89[4] affirmed the withdrawal of the tax privileges of AFPCES and PC/INPSSS. Section 1 of EO No. 93 states:

> *"Sec. 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:*

042337

[1] Withdrawing, subject to certain conditions, the duty and tax privileges granted to private business enterprises and/or persons engaged in any economic activity, and for other purposes.
[2] Amending Section 1 of Presidential Decree No. 1955, by including the New Armed Forces of the Philippines Commissary and Exchange Service (NAFPCES) and the PC/INP Service Stores System (PC/INPSSS) among the exemption.
[3] Withdrawing all tax and duty incentives, subject to certain exceptions, and expanding the powers of the Fiscal Incentives Review Board and for other purposes
[4] The exemption privileges enjoyed by AFPCES which were restored temporarily by FIRB Resolution No. 5-87 were withdrawn effective January 1, 1990.

a) *those covered by the non-impairment clause of the Constitution;*

b) *those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;*

c) *those enjoyed by enterprises registered with:*

   (i) *the Board of Investments pursuant to Presidential Decree No. 1789, as amended;*
   (ii) *the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;*
   (iii) *the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;*

d) *those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;*

e) *those conferred under the four basic codes namely:*

   (i) *the Tariff and Customs Code, as amended;*
   (ii) *the National Internal Revenue Code, as amended;*
   (iii) *the Local Tax Code, as amended;*
   (iv) *the Real Property Tax Code, as amended.*

f) *those approved by the President upon the recommendation of the Fiscal Incentives Review Board."* (Emphasis supplied)

Considering that APFCES is not one of those specifically excluded from the coverage of the withdrawal of tax and duty incentives, AFPCES is now subject to appropriate internal revenue taxes on its purchases and sales. While the tax exemption of AFPCES was restored temporarily pursuant to EO 76 dated December 2, 1986, as amended by FIRB Resolution No. 5-87, this was again withdrawn effective January 1, 1990, through the issuance of FIRB Resolution No. 12-89 dated July 6, 1989 which states:

"BE IT RESOLVED, AS IT IS HEREBY RESOLVED, to endorse to the Department of Budget and Management the subsidy availment of the Armed Forces of the Philippine Commissary and Exchange Service and the Philippine Constabulary/Integrated National Police Service Stores System through the Department of National Defense, in the amount of P50 million only, representing taxes, duties and

042337

#329-2016
6-29-2016

> *charges on items/commodities purchased and subsequently sold by these outlets to their intended beneficiaries, pursuant to the terms and conditions of Executive Order No. 76, as amended by FIRB Resolution No. 5-87. Provided, That the amount shall be chargeable against the Tax Expenditures Fund, pursuant to the terms and conditions of the Rules and Regulations to Implement the Subsidy Provision Under Executive Order No. 93. Provided, Further, That the exemption privileges enjoyed by subject outlets which were restored temporarily by FIRB Resolution No. 5-87 are hereby withdrawn effective January 1, 1990."* (Underscoring supplied)

Finally, AFPCES is not among those government corporations, agencies or instrumentalities exempt from income tax mentioned in Section 27 (C) of the Tax Code of 1997, as amended. *Expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. 1 Section 27 (C) provides:

> *"Section 27. Rates of Income tax on Domestic Corporations. —*
>
> *xxx xxx xxx*
>
> *(C) Government-owned or Controlled-Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the local water districts (LWDs), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity."*

Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Thus, the State cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Rather, being derogatory of sovereignty, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of statute.

042337

Tax exemptions must be construed strictly against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption must be favored. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it. (*BIR Ruling No. 310-2011* dated August 22, 2011)

In view of the foregoing, this Office is of the opinion that AFPCES is not entitled to exemption from income tax. Moreover, it is no longer entitled to tax exemption on its purchases of goods from local sources, manufacturers and suppliers pursuant to E. O. No. 93 and FIRB Resolution No. 12-89. Thus, AFPCES, now being subject to tax on its sales of goods, has to comply with the following obligations:

1. Register its business at the Revenue District Office (RDO) having jurisdiction over the principal place of business/head office and pay the corresponding registration fee thereof. The BIR Certificate of Registration which shall be issued by the RDO must be displayed conspicuously in the business establishment;

2. Secure Authority to Print (ATP) Official Receipts/Sales Invoices;

3. File applicable tax returns on or before the due dates, pay correct internal revenue taxes, and submit information returns and other tax compliance reports such as the Summary List of Sales/Purchases (SLS/P), Annual Alpha List of Payees, etc., at the time or times required by existing rules and regulations;

4. Keep books of accounts and other business/accounting records within the time prescribed by law, and such shall be made available anytime for inspection and verification by duly authorized Revenue Officer/s for the purpose of ascertaining compliance with tax rules and regulations; and

5. Withhold required creditable/expanded withholding tax, final tax, tax on compensation of employees, and other withholding taxes in accordance with Revenue Regulations No. 2-98, as amended. Remit the same to the Bureau at the time or times required, and issue to the concerned payees the necessary Certificate of Tax Withheld.

AFPCES may avail a tax subsidy for its purchases from local manufacturers, producers or suppliers of articles or commodities, subject to the observance of the guidelines for the availment thereof under Revenue Regulations No. 31-2003 dated September 22, 2003.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

042337
JUN 24 2016

K-1-JHB