REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

QUEZON CITY

Republic Act No. 1169	Revenue Regulations No. 06-2005	VAT-285-2021

Date: AUG 0 2 2021

PHILIPPINE CHARITY SWEEPSTAKES OFFICE
Sun Plaza Building, 1507 Shaw Boulevard corner
Princeton Street, Mandaluyong City 1552

Attention: **Reymar H. Santiago** Board Secretary and **Anselmo Simeon P. Pinili** Chairperson

Gentlemen:

This refers to a letter dated June 17, 2021 from the Philippine Charity Sweepstakes Office (PCSO) requesting for a ruling on the VAT exemption and invoicing requirements for PCSO Small Town Lottery (STL) Operations.

As represented, the use of STL Official Retail Receipts (ORRs) stemmed from the 2018 Congressional hearing where members of the Committee on Games and Amusements, particularly, Hon. Luis Raymond F. Villafuerte, stressed the need to properly account for collections and receivables from STL Authorized Agent Corporations (AACs) through the use of an ORR. When the games were suspended by the President on July 26, 2019, the National Bureau of Investigation was prompted to conduct an investigation on STL operations which allegedly found the sharing of 0.5% out of the 2% printing cost with AACs as irregular, if not illegal, and disadvantageous to the government. Such alleged failure to remit government share could have been prevented if a legitimate mechanism to account for actual sales was in place.

To ensure the proper accounting of collection and receivables from AACs and to maintain an adequate safeguard against corruption in the local level, the 2020 STL Revised Implementing Rules and Regulations (2020 STL RIRR) contained the following provision:

> "Section 21. AACs shall use tickets authorized and prescribed by the PCSO, without prejudice to the future use of fixed/handheld terminals or similar devices. For this purpose, PCSO shall issue guidelines for the implementation of STL Official Retail Receipts"

In 2018, the PCSO Board approved through Resolution No. 0291 s. 2018, the Guidelines in the implementation of the STL ORR, and Resolution No. 0208 s. 2018, the Terms of Reference (including the design of the STL ORR). The STL ORR was officially implemented in phases, pursuant to the Authority to Print (**ATP**) **No.** issued

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by **BIR-RDO No. 126** to PCSO. On January 1, 2019, Phase 1 was implemented covering the areas of Regions III, IV, NCR, and Albay Province, while Phase 2 covered Regions I, II, CAR, IV-B, and V. The same continued to be implemented until the suspension of PCSO Games on July 26, 2019 by the President due to alleged corruption therein. However, upon resumption of STL operations sometime in September 2019, the use of STL ORR was discontinued. The APO Production Unit, Inc. (APO), a recognized government printer, sent letters to PCSO, including one dated June 8, 2020, informing the PCSO Board that they continue to lose money and resources for the stockpiling of around two (2) million pads of STL ORRs which are yet to be delivered to the assigned Authorized STL Agents (ASAs).

Based on the foregoing, PCSO raised the following questions seeking the BIR's official position:

1. May PCSO mandate the use of ORRs in its STL Operations even for transactions involving less than P100.00?

2. May PCSO issue the ORR and the Ticket in the same document?

3. If PCSO issues an ORR in the operation of its games, will PCSO be liable for value-added tax (VAT)?

4. May PCSO print a newly-designed ORR without an ATP from BIR? May PCSO still use the existing **ATP No.** issued by BIR-RDO No. 126 valid until December 12, 2023?

5. May PCSO use previously printed/existing ORR? What is the legal implication of the "VAT Reg. TIN" printed on the face of the said ORR, if any?

In reply, please be informed of the following:

1. PCSO may mandate the use of ORRs in its STL Operations even for transactions involving less than P100.00

As mentioned in our earlier ruling, if PCSO decides to issue receipts for transactions valued at less than P100.00, for a valid and legitimate purpose, which, in this case, is to properly account for collections and receivables from STL AACs, it is definitely within its prerogative, as a taxpayer; and an imposition of such a requirement on its agents is way within its prerogative as principal. We see nothing legally objectionable about this undertaking.

2. PCSO may issue the ORR and the STL Ticket in the same document

There is no basis in law to prohibit the ORR and the ticket from being issued in one document. Hence, the PCSO may issue the ORR and the STL Ticket in just one document, for as long as there is a valid ATP for such ORR and Ticket in one, and for as long as all the invoicing requirements of Revenue Regulations 16-2005, as amended, are complied with in the ORR and the Ticket in one.

3. *PCSO will be liable for VAT even if an ORR is not issued, for as long as the transaction is found to be subject to VAT*

In general, it is not the issuance of receipts or invoices that will subject a taxpayer to VAT but the nature of the transaction itself, which the taxpayer executes. Thus, even if an ORR is not issued, for as long as the transaction is found to be subject to VAT, then the taxpayer will still be liable for VAT.

Moreover, there are instances when even if a transaction is exempt or not subject to VAT, or even if the taxpayer itself is exempt from VAT, the said taxpayer will still be liable for VAT. These instances are further discussed in Item 5.

It is the position of PCSO that it is exempt from VAT, pursuant to BIR Rulings and to Section 4 of Republic Act (RA) No. 1169[1], as amended by Presidential Decree (PD) No. 1157[2] which states:

> "REPUBLIC ACT No. 1169
>
> An Act Providing for Charity Sweepstakes Horse Races and **Lotteries**
>
> xx xx xx
>
> Section. 4. *Holding of sweepstakes*. The Office shall hold **charity horse race sweepstakes** under such regulations as shall be promulgated by the Board in accordance with Republic Act Numbered Three hundred and nine: Provided, however, That when the holding of a **sweepstakes race to determine prizes** is impossible due to war, public calamity, or other unforeseen or fortuitous event, or when there is no sufficient number of horses to determine the major prizes, the Board of Directors may determine the procedure to be followed in the distribution of prizes in the most just, equitable and expenditious manner. **The horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes,** except that each ticket shall bear a twelve-centavo internal revenue stamp and that from the total prize funds as provided herein from the proceeds of the sale of tickets, there shall be deducted an amount equivalent to five per centum of such total price, which shall be paid to the Bureau of Internal Revenue not later than ten days after each sweepstakes in lieu of the income tax heretofore collected from sweepstakes prize winners: Provided, however, That any prizes that may be paid out from the resulting prize fund, after said five per centum has been deducted, shall be exempt from income tax. The tickets shall be printed by the government and shall be considered government securities for the purposes of penalizing forgery or alteration." (Emphasis and underscoring supplied)

[1] An Act Providing for Charity Sweepstakes Horse Races and Lotteries, approved June 18, 1954.

[2] Increasing The Rates of Tax on Winnings in Jai-Alai and Horse-Racing and the Share of the Government from the Sweepstakes Total Prize Fund, approved June 3, 1977).

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It is also claimed that lotteries, like sweepstakes, are also exempt from VAT, and since STL is also a lottery, only on a smaller scale, then it is also exempt from VAT.

Relative thereto, please take note of Section 4 of RA No. 1169, as amended, which states that "**(t)he horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes** x x x". Based on the aforesaid provision, it is clear that it is not PCSO *per se*, as an entity, that is exempt from tax but its activity, specifically, the "**horse races and the sale of tickets in the said sweepstakes**".

Analyzing the provision in Section 4, the following are exempted from tax:

1. The horse races, and
2. The sale of tickets in the said sweepstakes

Since there is no issue about horse races, then we shall go to the second exemption. On its face, the law states that the exemption is on "**the sale of tickets in the said sweepstakes**". It is not just any sweepstakes but the "**said**" sweepstakes, which, referring to Section 4 above, is the "**charity horse race sweepstakes**".

Thus, the "sweepstakes" that are being referred to in the aforesaid Section as exempt from tax pertain only to <u>charity horse race sweepstakes</u>.

As for the Court of Tax Appeals (CTA) case of *Philippine Charity Sweepstakes Office vs. The Commissioner of Internal Revenue*[3] and the past BIR Rulings namely, No. 004-05 dated July 28, 2005, No. 097-08 dated July 31, 2008, No. 310-11 dated August 22, 2011, and No. 213-17 dated April 26, 2017, none of these involve the sale of STL tickets. Hence, they are inapplicable.

Based on the foregoing, considering that the sale of STL tickets does not pertain to the conduct of horse races nor the sale of horse race sweepstakes, then it is not covered under the exemption in RA No. 1169, as amended, and is therefore subject to VAT.

4. ***PCSO is not authorized to print a newly-designed ORR without a valid ATP from the BIR, and may not use the existing* ATP *valid until December 12, 2023 to print the redesigned ORR.***

All persons who are engaged in business shall secure from the BIR an authority to print receipts or sales or commercial invoices before a printer can print the same and before the commencement of the business. Considering that the ORRs are manually filled out and not dispensed by a machine, an ATP is thus required for the printing of the ORRs.

PCSO is not authorized to use the existing **ATP No.** issued by BIR-RDO No. 126, which is valid until December 12, 2023, to print the re-designed ORR.

A copy of the ATP is printed at the back cover of every receipt/invoice booklet, as proof of printing approval of the design approved by the BIR. Thus, if there is a redesign in the ORR,

[3] C.T.A. EB CASE NO. 807. February 21, 2013.

7.

a new application for ATP should be submitted to the BIR together with the new design, among others. If the new design meets the allowed format, then a new ATP will be issued. Only then can PCSO print using the new design.

5. The words "VAT Reg. TIN" printed on the face of the ORR has implications. PCSO may not use previously printed ORRs, as these are invalid

Revenue Regulations (RR) No. 16-2005[4], as amended, provides the consequences of issuing an erroneous VAT invoice or official receipt. SECTION 4.113-4 of which states:

> "**SECTION 4.113-4.** ***Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.*** —
> **(A) Issuance of a VAT Invoice or VAT Receipt by a non-VAT person.** — If a person who is not VAT-registered issues an invoice or receipt showing his TIN, followed by the word "VAT", the erroneous issuance shall result to the following:
>
> (1) The non-VAT person shall be liable to:
> (i) the percentage taxes applicable to his transactions;
> (ii) VAT due on the transactions under Sec. 106 or 108 of the Tax Code, without the benefit of any input tax credit; and
> (iii) a 50% surcharge under Sec. 248 (B) of the Tax Code;
>
> (2) VAT shall be recognized as an input tax credit to the purchaser under Sec. 110 of the Tax Code, provided the requisite information required under Subsection 4.113 (B) of these Regulations is shown on the invoice or receipt.
>
> **(B) Issuance of a VAT Invoice or VAT Receipt on an Exempt Transaction by a VAT-registered Person.** — If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable and the issuer shall be liable to pay VAT thereon. The purchaser shall be entitled to claim an input tax credit on his purchase."

Thus, depending on whether PCSO is VAT registered or not will determine its liability as stated in RR No. 16-2005, as amended.

Nevertheless, PCSO may not use previously printed ORRs. It was discovered that the authority to print with **ATP No.** , which is valid from 2018 until December 12, 2023, was issued to PCSO, as printer. It is therefore PCSO that is authorized to print the ORRs and not APO. Since APO has no authority to print the ORRs, and APO printed those ORRS, then such ORRs are therefore invalid.

[4] Consolidated Value-Added Tax Regulations of 2005.

This ruling is being issued on the basis of the facts and documents as represented and submitted. However, if upon investigation, the BIR ascertains 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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