REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 237, 113 (A)) and 311 the Tax Code; Revenue Regulations No. 10-1999; Section 5, Rule 18 of IRR of RA No. 11534	VAT-F. 424 - 2022

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

Date: NOV 1 1 2022

PHILIPPINE VENDING CORPORATION
54 E. Rodriguez Jr. Avenue
Bagong Ilog
Pasig City 1600

Attention: **DENNIS E. GERNALE**
Finance and Accounting Head

Gentlemen:

This refers to your request on behalf of Philippine Vending Corporation ("**PVC**") for clarification whether: (1) PVC's sales to JPMorgan Chase Bank, N.A. – Philippine Global Service Center ("**JPMC**") are subject to value-added tax ("**VAT**") at zero percent (0%) rate; and (2) PVC is required to secure a POS (Point of Sale) permit with the Bureau of Internal Revenue ("**Bureau**").

Background:

1. PVC, a VAT-registered[1] domestic corporation registered with the Securities and Exchange Commission ("**SEC**") with company registration number , is engaged in the business of providing vending machine solutions to customers such as coffee, beverages and snacks.

2. JPMC is an export business enterprise registered with the Philippine Economic Zone Authority ("**PEZA**")[2] engaged in business processing and customer service, applications development, software quality assurance, help desk/tech support and IT support services in various places ("**Registered Activity**").

3. PVC entered into an agreement with JPMC on June 7, 2022 wherein PVC shall provide JPMC products and services for vending services and retail market. PVC shall provide all the vending machines and accessories requirement by JPMC, including, PVC personnel needed to ensure: (a) smooth provision of services to JPMC; and (b) that the vending machines are properly stocked and fully operational.[3]

[1] Per Certificate of Registration issued by the Bureau of Internal Revenue dated June 5, 1997.
[2] Per PEZA Certification Form No. Certificate No. dated January 20, 2022.
[3] Per Section IV (4.13) of the Schedule 2 of the Master Agreement which is effective May 1, 2022.

4. Part of the agreement between PVC and JPMC is that PVC has to place a kiosk that is unattended releasing beverage and snacks to employees of the JPMC. This arrangement is called "Grab, Scan and Go" where employees can swipe the item of their choice into a scanner to make a purchase. Payment will be accepted by PVC's vending computer which is registered with the BIR for CAS specifically e-invoicing. The said vending computer will provide e-invoicing to the customers via email which such customers provide during the purchase process or during set-up or initial registration with PVC's machine. Afterwards, PVC issues official BIR-registered receipts to its customers upon its visit for the refilling of machines.

JPMC requires PVC to secure a POS permit with the Bureau relating to its "Grab, Scan and Go" service. Hence, this request.

In reply, please be informed as follows:

Sales to JPMC is subject to twelve percent (12%) VAT

Section 311 of the National Internal Revenue Code of 1997, as amended ("**Tax Code**")[4] in relation to Rule 18 of the Implementing Rules and Regulations ("**IRR**") of Corporate Recovery and Tax Incentives for Enterprises Act ("**CREATE Law**"),[5] provides that registered business enterprises ("**RBEs**") may continue to avail of the income tax incentives granted to them before the effectivity of the CREATE Law (i.e., income tax holiday ("**ITH**"), five percent (5%) tax on gross income earned incentive after the ITH). However, these income tax incentives may only be availed of within the transitory period (For ITH, the remaining period of the ITH as specified in the terms and conditions of their registration; For 5% gross income tax, for ten (10) years from the effectivity of the CREATE Law or until April 11, 2031[6]).

When it comes to the non-income tax incentive such as the VAT zero-rating, it bears stressing that Section 5, Rule 18 of the amended IRR of CREATE Law expressly states that the VAT zero-rating on local purchases incentive shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of the export enterprises until the expiration of the transitory period.[7] Hence, while it is true that a registered export enterprise ("**REE**") may still avail of the VAT zero rating, the same is limited only to goods and services directly attributable to and exclusively used in the registered project or activity of said export enterprises.

Section 5, Rule 2 of the amended IRR provides what constitutes "directly and exclusively used in the registered project or activity," as referring to raw materials, inventories, supplies, equipment, goods, packaging materials, services, including provision of

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[4] As amended by Section 16 of CREATE Law.
[5] Revenue Memorandum Circular No. 83-2021, Circularizing the Implementing Rules and Regulations of Title XIII of Republic Act No. 8424 Otherwise Known as the "National Internal Revenue Code of 1997", As Amended by Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, July 12, 2021.
[6] The CREATE was signed into law on March 26, 2021. It was published on March 27, 2021 and took effect on April 11, 2021; Revenue Memorandum Circular No. 38-2022, April 6, 2022.
[7] Section 5, Rule 18 of the amended CREATE IRR.

basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.

For this purpose, under Questions No. 13 and 14 of Revenue Memorandum Circular ("**RMC**") No. 24-2022,[8] the Bureau clarified that the phrase "direct and exclusive use," includes expenditures that are/will be directly and exclusively used in or attributable to the registered project or activity, without which the registered project or activity cannot be carried out. These are expenses that are indispensable to the project or activity, without which, the same cannot be carried out.

By phrasing the provision in such way, it is clear that the intention of the legislators is to subject to VAT zero-rating only those expenditures that are directly and exclusively used in the registered project or activity, excluding any expenses that while may be important, the absence of which will not impede the continuous operation of the same.

The Bureau acknowledges the fact that the categorization of expenses as to what falls under "directly and exclusively used in business" depends on the nature of the registered project or activity of the export enterprise. It is the REE's duty to prove that the expenses being claimed as subject to zero-rated VAT are directly and exclusively used in its registered project or activity, and without such, the operations cannot be carried out.

Applied in this case, considering JPMC's Registered Activity, it is clear that even without PVC's vending products and services, the Registered Activity of JPMC can still continue and be carried out. There is no showing that the absence of these vending products and services for JPMC's employees will hinder JPMC's operations or performance of its Registered Activity.

Accordingly, the Bureau hereby rules that the provision of vending products and services for the benefit of JPMC's employees does not fall squarely under the term "directly and exclusively used in business." Thus, PVC's sales to JPMC are subject to VAT at twelve percent (12%) rate.

PVC is not required to secure a POS permit with the Bureau

Section 237 of the Tax Code provides that registered invoices or receipts shall be issued at the point of each sale and transfer of merchandise or for services rendered valued at One Hundred Pesos (PhP100.00).

Take note, however, that Section 113 (A) of the Tax Code is a specific provision that applies particularly to VAT-registered persons which expressly states that VAT-registered persons shall issue a VAT invoice or official receipt for every: (a) sale, barter or exchange of

[8] Clarifying Issues Relative to Revenue Regulations (RR) No. 21-2021 Implementing the Amendments to the Value-Added Tax (VAT) Zero Rating Provisions Under Sections 106 and 108 of the National Internal Revenue Code of 1997 (Tax Code), in Relation to Sections 294(e) and 295(D), Title XIII of the Tax Code, Introduced by Republic Act 9R/A.) No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR), February 23, 2022.

goods or properties; and (b) lease of goods or properties, and for every sale, barter or exchange of services, respectively.

Thus, all VAT-registered entities, regardless of the value, shall issue a VAT invoice or official receipt for every sale/lease of its goods and/or service.

Section 1 of RR No. 10-1999[9] states that the Bureau will only issue permit to use cash register and POS machines in lieu of sales invoices or receipts to the proprietors, owners or operators of the following lines of business:

1. Supermarkets
2. Department stores, cinematographic films
3. Drugstores
4. Bookstores
5. Groceries
6. Bakeries
7. Restaurants, bars, beers, gardens, refreshment parlors and other eating places
8. Record bars and music stores
9. Video shops selling and leasing out
10. Garages and other parking spaces
11. Gasoline stations
12. Hotels, motels, lodging houses and the like
13. Token exchange stations
14. Recreational and amusement centers

However, under the same regulations, the Commissioner of Internal Revenue (**"CIR"**) may, in meritorious cases, qualify other lines of business to use cash register and POS machines, considering modern business practices.

Applied in this case, considering that PVC is a VAT-registered entity, it is required to issue a VAT invoice or official receipt for every sale of goods or service, respectively, even for those goods or services valuing below PhP100.00.

As represented, payments of the customers will be accepted by PVC's vending computer (registered with the BIR for CAS specifically e-invoicing). Then, the said vending computer will provide e-invoice to the customers via his/her registered email. Afterwards, PVC issues official BIR-registered receipts to its customers upon its regular visit for the refilling of machines.

While it is true that PVC is not issuing the relevant official manual BIR invoice/receipt at the point of each sale of its goods (only e-invoice) considering the nature of the business (vending machine/solution), however, it eventually issues the same to its customers upon its regular visit for the refilling of machines. Such being the case, this Office is of the opinion that PVC is substantially compliant with Section 113 (A) of the Tax Code.

Also, it bears emphasizing that the recent TRAIN Law[10] introduced the requirement for mandatory e-invoicing for certain companies, including those considered Large Taxpayers by

[9] Rules on the Use of Cash Register and Point-of-Sale Machines in Lieu of Registered Sales Invoices or Receipts, June 25, 1999.

the Bureau and those that are engaged in the export of goods and services, which such e-invoicing procedures to be implemented by January 2023.[11]

Further, considering that PVC's line of business is not one of the businesses which are required to use cash register and Point-of-Sale ("**POS**") machines in lieu of sales invoices or receipts, and considering further that there are no existing revenue issuances, rules or regulations mandating vending solutions industry to use the same, this Office hereby rules that PVC may opt not to use cash register and POS machines in providing its services to JPMC.

This ruling is 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,

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue
002405

[10] Republic Act No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion, December 19, 2017.

[11] Section 237-A of the Tax Code; Revenue Regulations No. 8-2022, Prescribing Policies and Guidelines for the Implementation of Section 237 and 237-A of the National Internal Revenue Code, as Amended by Republic Act (R.A.) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN, Through the Use of the Electronic Invoicing/Receipting System (EIS), June 22, 2022.