REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
QUEZON CITY

Sec. 109 (1) (A); RR No. 16-05
VAT Ruling No. 009-07
VAT- [illegible]

JUN 13 2022

CHOOKS TO GO INC.
Unit 1008 Taipan Place Condominium
F. Ortigas Jr. Road, Ortigas Center
San Antonio, 1605, City of Pasig
NCR, Second District, Philippines

Attention: Mark Oliver L. Trias
Vice President

Gentlemen:

This refers to your letter dated May 31, 2022 requesting for a ruling that the sale of roasted chicken of CHOOKS TO GO INC. qualifies as a value-added tax (VAT) exempt transaction under Section 109 of the National Internal Revenue Code of 1997 (Tax Code), as amended by Republic Act (RA) Nos. 8761, 9010, 9238, 9337, 9361 and further amended by RA No. 10963.

As represented, CHOOKS TO GO INC. (formerly: Bounty Agro Ventures, Inc.) is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines.

CHOOKS TO GO INC. is organized primarily to engage in the business of manufacturing, marketing or distributing goods, such as, poultry and meat products, other products with poultry or meat base or poultry meat derivatives or analogues, flour, feeds, feed meals, and their by-products and other similar products of every class and description; to own, acquire, pledge, buy, sell, convey, assign and transfer poultry or meat products, or poultry of meat based products and other poultry or meat derivatives or analogues, flour, feeds, feed description, goods and merchandise of every kind or description which may be incidental in carrying out the business of the corporation.

Sale of goods are recognized when CHOOKS TO GO INC. sells the roasted chicken to the customer on a take-out basis, as control passes to the customer on the day the transaction takes place.

Herein is the process flow:

A. When the dressed chicken meets the required specifications, weighed and sorted according to size, marinated, packed, sealed and labeled, CHOOKS TO GO INC. delivers the dressed chicken to various outlets;

B. Prior to roasting, store outlets do not add any other preservatives, additives or coloring; and

C. Store outlets sell roasted chickens in either whole or chopped to customers.

CHOOKS TO GO INC. claims that the foregoing sale is a VAT exempt transaction within the contemplation of Section 109(1)(A) of the Tax Code, as amended, and Revenue Regulations (RR) No. 16-2005 which implements the said Section 109(1)(A) under Section 4.109-1(B)(1)(a), because allegedly, it involves a sale of an agricultural food product that has undergone the simple processes of preparation or preservation for the market such as freezing, drying, salting, broiling, roasting, smoking, or stripping.

Hence, the request for a confirmatory ruling.

In reply, it is important to note that Section 109(1)(A) of the Tax Code, as amended, considers an agricultural or marine food product in its original state even if it has undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking, or stripping, *viz.*:

> "SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.:
>
> (A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic material therefor:
>
> Products classified under this paragraph shall be **considered in their original state even if they have undergone the simple processes of <u>preparation or preservation</u> for the market, <u>such as freezing, drying, salting, broiling, roasting, smoking or stripping</u>.** x x x" (Emphasis supplied).

Section 4.109-1(B)(1)(a) of RR No. 16-2005 reiterates the said Section 109(1)(A), *viz.*:

> "SECTION 4.109-1. *VAT-Exempt Transactions.* —
>
> (B) Exempt transactions. —
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:
>
> (a) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
> Livestock shall include cows, bulls and calves, pigs, sheep, goats and rabbits. Poultry shall include fowls, ducks, geese and turkey. Livestock or poultry does not include fighting cocks, race horses, zoo animals and other animals generally considered as pets.
>
> Marine food products shall include fish and crustaceans, such as, but not limited to, eels, trout, lobster, shrimps, prawns, oysters, mussels and clams.

> **Meat, fruit, fish, vegetables and other agricultural and marine food products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping, including those using advanced technological means of packaging, such as shrink wrapping in plastics, vacuum packing, tetra-pack, and other similar packaging methods.**" (Emphasis and underscoring supplied.)

Based on the foregoing provisions, "roasting" is considered under the simple processes of "preparation or preservation". It is noted, however, that under CHOOKS TO GO INC.'s process flow, the dressed chicken is marinated before it is packed, sealed, labeled, and delivered to various outlets.

Thus, the dressed chicken is soaked in a mixture of ingredients before it is delivered to the outlets where it is roasted. There is no question that "roasting", per se, without marinating, is considered a simple process of "preparation or preservation", as provided by the above law. It is apparent, however, that the marinating process is outside the contemplation of "freezing, drying, salting, broiling, roasting, smoking or stripping, including those using advanced technological means of packaging" and can be construed as a value adding activity that can alter the taste of the product.

We note that the other processes of preparation and preservation for the market, i.e., broiling and roasting, were introduced by R.A. No. 8241 and in the records of the Bicameral Conference Committee, the following deliberations were made, *viz.*:

> "MR. DAMASING: More or Less, Your Honor, can you give us just few example that would show that the House is more receptive to the cry of the poor people rather than the Senate.
>
> "MR. JAVIER (E): Well, for example, your Honor, one is we were able to get a presumptive tax credit for certain items — food items which are being purchased mostly by our workers. Like, sardines, canned fish, milk, sugar and then cooking oil. Then another, would be — we redefined the definition of agricultural products. For example, it now includes roasting and broiling. So, if our worker who goes home at night because of traffic stops at ANDOK'S LECHON, and buys roasted chicken on a take-out basis NO VAT will be imposed on his purchase of that roasted chicken." (Underscoring supplied.)

From the foregoing discussion of Congress, it is clear that the sale of chicken, which has undergone the simple process of roasting, on a take-out basis, is covered by the VAT exemption under Section 109(1)(A) of the Tax Code, as amended.

Although there is no mention of the process of marinating which is an activity that is outside the process of roasting, the roasted chicken of ANDOK'S LECHON was mentioned and which is presumed to undergo a similar marinating process as CHOOKS TO GO INC.

Such being the case, the sale of roasted chicken is therefore exempt from VAT as provided for under Section 109(1)(A) of the Tax Code, as amended, and as implemented under Section 4.109-1 (B) (1) (a) of RR No. 16-2005.

It is to be emphasized however, that the exemption applies only if the roasted chicken, which has undergone the simple process of roasting, is purchased on a take-out basis. Accordingly, should CHOOKS TO GO INC. maintain a facility by which the chicken, which has undergone the simple process of roasting, will be offered as a menu item to customers who would dine-in, then it will be subject to the VAT on sale of service which is similarly imposed on restaurants and other eateries (VAT Ruling No. 009-07 dated June 21, 2007).

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, this ruling shall be considered null and void.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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