



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

Handwritten: 10/22/18
OCT 22 2018



15 October 2018

(e) Gove 10/24/18 P. M.

ATTY. EDGAR J. BAGUIO
Counsel for the Petitioner/Appellant
Gen. Luna St., Estaka,
Dipolog City, Zamboanga del Norte

DOF Opinion No. 006.2018

SUBJECT: Request for Review of Bureau of Internal Revenue Ruling No. 419-2013

Dear **Atty. Baguio**:

This refers to the subject letter dated 11 December 2013 ("Request for Review") which you filed with this Department on behalf of Zamboanga Del Norte Electric Cooperative, Inc. ("ZANECO") to request the review of Bureau of Internal Revenue ("BIR") Ruling No. 419-2013 dated 13 November 2013, which ruled that:

Accordingly, this Office opines that ZANECO's income from its electric service operations is subject to income tax. Beginning January 1, 2003, however, ZANECO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended on December 31, 2002, the thirtieth full calendar year after the date of the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing, whichever event comes first.

xxx

Upon the effectivity of R.A. 9337, the exemption from VAT of electric cooperatives was removed. Consequently, Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, particularly Section 4.108-2 (13) and Section 4.108-3 (f) provide that sales of electricity by generation, transmission, and/or distribution companies are now subject to now 12% VAT on their gross receipts. Provided, however, that sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

It is your position, as stated in your Request for Review, that ZANECO is permanently exempted from the payment of income taxes as provided in number (1), paragraph

(a), Section 39, of Presidential Decree ("PD") No. 269¹ and that it is no longer accountable to the BIR for the VAT on generation, transmission, and systems loss being collected and remitted to the Generation Companies ("GC") and National Transmission Corporation ("TRANSCO"), now National Grid Corporation of the Philippines ("NGCP").

We agree with the BIR.

In December 1986, then President Corazon C. Aquino issued Executive Order ("EO") No. 93² which withdrew all tax and duty exemptions granted to private entities effective 10 March 1987. Tax and duty incentives, however, are not withdrawn for those that are approved by the President upon the recommendation of the Fiscal Incentives Regulatory Board ("FIRB"). Further, section 2 of EO No. 93 grants FIRB the following powers:

- a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part;
- b) revise the scope and coverage of tax and/or duty exemption that may be restored;
- c) impose conditions for the restoration of tax and/or duty exemption;
- d) prescribe the date or period of effectivity of the restoration of tax and/or duty exemption;
- e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.³

Effective 1 July 1987, FIRB Resolution No. 24-87 restored the tax and duty exemption privileges of electric cooperatives under PD No. 269. It is clear from FIRB Resolution No. 24-87 that the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of PD No. 269 were restored with an exception for income from their electric service operations, that is, **that the income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable.**

In the case of *Davao Oriental Electric Cooperative, Inc. v. Province of Davao Oriental*,⁴ the validity of FIRB Resolution No. 24-87 was recognized. This is anchored on the claim that at the time then President Corazon Aquino issued EO No. 93, she was

¹ SEC. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.*— Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, a cooperative (1) **shall be permanently exempt from paying income taxes**, (emphasis supplied)

National Electrification Administration Decree, Presidential Decree No. 269, § 39 (5 September 1973).

² *Withdrawing All Tax and Duty Incentives of the Fiscal Incentives Review Board*, Executive Order No. 93, (17 December 1986).

³ EO No. 93 (s. 86), § 2.

⁴ G.R. No. 170901 (20 January 2009), 596 PHIL 705-714.

exercising both executive and legislative power,⁵ thus, she has the power to delegate to the FIRB the power to restore and limit the tax and duty privileges of electric cooperatives.

It should be noted that the repealing clause of the Philippine Cooperative Code of 2008, which amended the Cooperative Code of the Philippines, did not mention anything about PD No. 269. Further, Article 130⁶ of the same Code provides that electric cooperatives registered with the National Electrification Administration (“NEA”) under PD No. 269, as amended, which opt not to register with the Cooperative Development Authority (“CDA”) shall not be entitled to the benefits and privileges under the Philippine Cooperative Code of 2008.

Based on the documents submitted, ZANECO remains with the NEA. It has not converted into a stock cooperative, nor transferred to the CDA. In view of the foregoing, the income of ZANECO from electric service operations and other sources remains taxable in accordance with FIRB Resolution No. 24-87.

It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted.⁷ It is clear that the intent of EO No. 93 is to deter tax manipulation or avoidance. It has been observed that the privileges have become convenient opportunities for tax manipulation or avoidance. The EO, then, encourages private entities whose tax and duty exemption privileges are to be withdrawn to still remain competitive by improving on their operational capacity and competence, rather than by relying on fiscal incentives which create distortions in the overall pricing and market systems.⁸ Therefore, the income of ZANECO from electric service operations and other sources is not tax exempt.

As for the issue on the accountability of ZANECO for the remittance of the VAT component in the generation and transmission charges and systems loss, the BIR, in Revenue Memorandum Circular (“RMC”) No. 61-2005,⁹ as revised by RMC No. 62-2012¹⁰ and further clarified by RMC No. 71-2012¹¹ extensively discussed the procedures on the remittance of the generation and transmission charges, including the corresponding VAT component, by the distribution companies and electric cooperatives to the GC and TRANSCO, now NGCP. The procedures discussed in these issuances should be able to provide apt guidance to ZANECO. Further

⁵ *Maceda v. Macaraig, Jr.*, G.R. No. 88291 (Resolution) (8 June 1993).

⁶ ART. 130. Registration Options of Electric Cooperatives. — Electric cooperatives registered with the National Electrification Administration (NEA) under Presidential Decree No. 269, as amended, which opt not to register with the Authority are allowed to retain the word 'cooperative' in their registered names: Provided, That they shall not be entitled to the benefits and privileges under this Code. Philippine Cooperative Code of 2008, § 130.

⁷ *Radio Communications of the Philippines, Inc. v. Provincial Assessor of South Cotabato*, G.R. No. 144486, 13 April 2005.

⁸ Executive Order No. 93, [December 17, 1986]

⁹ Clarifying the VAT Provisions of R.A. 9337, Revenue Memorandum Circular No. 61-05 (27 October 2005).

¹⁰ Clarifying the Reporting of Gross Receipts Relative to Power Generation and Distribution, Revenue Memorandum Circular No. 062-12 (25 October 2012).

¹¹ Clarification on the Implementation of RMC No. 62-2012 Dated October 25, 2012, Revenue Memorandum Circular No. 071-12 (15 November 2012).

clarification is provided by NEA Memorandum No. 009-15.¹² To be clear, the following provisions from NEA Memorandum No. 009-15 should be able to answer the qualms of ZANECO:

4. The VAT collected by the ECs on generation, transmission and system loss shall be remitted to the concerned GC and NGCP, which in turn, shall be responsible for the tax due to the BIR.
5. The ECs are liable for the VAT on their own gross receipts and it will be the GC and NGCP, which are liable, under the law, to pay for the VAT on generation gross sales and transmission gross receipts, respectively. Gross receipts, as used herein, shall be net of all discounts and gross of penalties. Any additional VAT imposed on the ECs by reason or as a consequence of their fault or negligence cannot be passed on to the end-users.

Please note that under the Tax Reform Act of 1997, as amended by the Tax Reform on Acceleration and Inclusion (TRAIN) Law, the phrase 'sale or exchange of services,' which is subject to twelve percent (12%) VAT on their gross receipts, now includes sales of electricity by distribution companies, including electric cooperatives. Moreover, RR No. 16-2005, as amended by RR No. 13-2018, has reflected the same.

We, therefore, uphold the validity and the applicability of the procedures stated in the abovementioned issuances from the BIR and NEA. Consequently, ZANECO should follow and refer to these for clarity.

In light of the foregoing, this Office affirms the ruling of the CIR with clarification on the VAT that ZANECO is directly liable.

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, then this ruling shall be considered as null and void.

Sincerely yours,



CARLOS G. DOMINGUEZ
Secretary of Finance
OCT 17 2018

CC **Commissioner Caesar R. Dulay**
Bureau of Internal Revenue



Adelmo P. Laput
General Manager – CEO
Zamboanga Del Norte Electric Cooperatives, Inc.
Gen. Luna St., Dipolog City, Zamboanga Del Norte

(A)
Carmy
10/18/18
#2: 20

¹² ECs' Gross Receipts for Value Added Tax and Local Taxes, NEA Memorandum No. 009-15 (April 8, 2015).