

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

February 17, 2012

REVENUE REGULATIONS No. 2-2012

SUBJECT : Tax Administration Treatment of Petroleum and Petroleum Products Imported into the Philippines Including those Coming in Through Freeport Zones and Economic Zones and Registration of All Storage Tanks, Facilities, Depots and Terminals.

TO : All Internal Revenue Officers and Others Concerned

BACKGROUND

In light of reported rampant smuggling of petroleum and petroleum products resulting to substantial revenue losses, it becomes mandatory for the Government to immediately implement corrective measures to stop this activity in order to ensure the collection of correct taxes. Accordingly, these regulations are being issued to ensure the collection of taxes from whom they are due.

SECTION 1. SCOPE – Pursuant to Section 244, in relation to Section 245, of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated in order to prescribe: 1) the tax administration treatment of all petroleum and petroleum products imported into the Philippines, including those coming in through Freeport zone or Economic Zones; and 2) the refund of Value-Added Tax (VAT) and Excise taxes paid for transactions statutorily zero-rated or exempt therefrom; and to provide administrative guidelines on the operation and maintenance of storage tanks, facilities, depots or terminals where commodities for commercial use can be stored.

SECTION 2. DEFINITION OF TERMS –

Freeport Zones and Economic Zones, as defined by law, are considered as separate customs territories. Sales by entities registered with these zones are either treated as sales outside the country (if the purchaser is a locator as well or if the goods are for export to a country other than the Philippines) or domestic sales. If considered as domestic sales, said sales are importations in the hands of the purchaser and are thus, subject to the corresponding customs duties and other taxes on imported products.

Permit to Operate is the document issued by the Bureau of Internal Revenue (BIR) to excise taxpayers or operators, lessors/lessees of storage facilities of articles subject to excise taxes which shall include the appropriate terms and conditions for the strict observance of the permittee, including the exact description of the commodity to be contained therein. Should the permittee wish to change the contents of said storage facility, it should secure another permit to operate or permit to operate exempt facility, as the case may be.

Permit to Operate Exempt Facility is the document to be issued by the BIR to operators, lessors/lessees of storage facilities of articles which are not subject to excise tax. Said permit should contain the appropriate terms and conditions for the strict observance of the permittee, including the exact description of the commodity to be contained therein. Should the permittee wish to change the contents of said storage facility, it should secure another permit to operate or permit to operate exempt facility, as the case may be.

Petroleum shall refer to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits.

Petroleum Products shall refer to products formed in the case of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery such as, but not limited to: LPG, naphtha, gasolines, solvents, kerosenes, aviation fuels, diesel oils, fuel oils, waxes and petrolatums, asphalt, bitumens, coke and refinery sludges, or other such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically-defined compounds in a pure or commercially pure state and to which various substances may have been added to render them suitable for particular uses: *Provided*, That the resultant product contains not less than fifty percent (50%) by weight of such petroleum products.

Terminal and **Depot** shall be used synonymously and, for purposes of these Regulations, shall refer to a facility with at least one (1) structure, such as a silo, tank, yard or warehouse, intended for storage of commodities, whether in bulk or in packages, which may or may not have handling equipment, such as pipelines or conveyors, as well as berth for mooring cargo carriers.

Permittee is the taxpayer granted by the BIR a permit to operate. The permittee is one who either owns, operates and/or leases to others the storage facilities as covered by a lease or operating agreement.

Lease or Operating Agreement is the document that stipulates the agreement between the lessee and lessor with regard to the use and/or operation of the former of the storage facilities owned by the lessor.

Lessor or Operator shall be used synonymously with an owner or the one that grants the use of a storage facility with whom a lease agreement was executed.

Lessee shall refer to the one who is granted the use of a storage facility by virtue of a lease agreement with its owner or operator.

SECTION 3. TAX TREATMENT OF ALL PETROLEUM AND PETROLEUM PRODUCTS IMPORTED AND ITS SUBSEQUENT EXPORTATION OR SALES TO FREEPORT AND ECONOMIC ZONE LOCATORS OR OTHER PERSONS/ENTITIES; REFUND OF TAXES PAID; AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND OTHER ADMINISTRATIVE REQUIREMENTS. –The Value-Added and Excise taxes

which are due on all petroleum and petroleum products that are imported and/or brought directly from abroad to the Philippines, including Freeport and Economic zones, shall be paid by the importer thereof to the Bureau of Customs (BOC).

The subsequent exportation or sale/delivery of these petroleum or petroleum products to registered enterprises enjoying tax privileges within the Freeport and Economic zones, as well as the sale of said goods to persons engaged in international shipping or international air transport operations, shall be subject to 0% VAT. With respect to the VAT paid on petroleum or petroleum products by the importer on account of aforesaid 0% VAT transactions/entities and the Excise taxes paid on account of sales to international carriers of Philippine or Foreign Registry for use or consumption outside the Philippines or exempt entities or agencies covered by tax treaties, conventions and international agreements for their use or consumption (covered by Certification in such entity's favor), as well as entities which are by law exempt from indirect taxes, the importer may file a claim for credit or refund with the BOC, which shall process the claim for refund, subject to the favorable endorsement of the BIR, in accordance with existing rules and procedures: *Provided*, that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that said petroleum or petroleum products have been sold to a duly registered locator and have been utilized in the registered activity/operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT, and/or exempt from Excise taxes.

In the event that the said Freeport/Economic zone registered enterprise shall subsequently sell/introduce the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations) or another Freeport/Economic zone registered enterprise not enjoying tax privileges, no refund for excise taxes shall be granted to the importer for the product sold. In any event, the possessor of petroleum or petroleum products must be able to present sufficient evidence that the excise taxes due thereon have been paid, otherwise the excise taxes due on said goods shall be collected from said possessor/user.

In case of sale/introduction of petroleum and petroleum products, or part of the volume thereof, by a Freeport/Economic zone registered enterprise, or part/volume thereof, into the customs territory or to a Freeport/Economic zone registered enterprise not enjoying tax privileges, or any sale to an entity not enjoying 0% VAT rate, the seller shall be liable for 12% VAT. In this instance, no refund for VAT shall be allowed the importer or an assessment for VAT shall be issued to the said importer, if the refund has already been granted, and another assessment for VAT shall be made against the seller.

For each and every importation of petroleum and petroleum products, the importer thereof shall secure the prescribed ATRIG from the BIR's Excise Tax Regulatory Division (ETRD), and pay the Value-Added and excise taxes, as computed, before the release thereof from the BOC's custody. In case of subsequent sale/introduction to customs territory by a Freeport/Economic zone-registered enterprise of petroleum and petroleum products, the importer shall secure the necessary Withdrawal Certificate.

For excise tax purposes, all importers of petroleum and petroleum products shall secure a Permit to Operate with the BIR's ETRD. Such permit shall prescribe the appropriate terms and conditions which shall include, among others, the issuance of a Withdrawal Certificate and the submission of liquidation reports, for the Permittee's strict compliance.

SEC. 4. REGISTRATION OF ALL STORAGE FACILITIES. – All tank facilities, depots or terminals throughout the Philippines, including those located within the Freeport Zones as well as within the Economic Zones shall be registered by the owners, lessors or operators thereof with the appropriate BIR Office having jurisdiction over the said facilities as follows:

Revenue Regions Where the Storage Facilities are Located	Appropriate BIR Office Where to Register
Revenue Region Nos. 4, 5, 6, 7, 8, 9 and 10	Excise Tax Regulatory Division, National Office
Revenue Region Nos. 1, 2 and 3	Excise Tax Area I-Baguio City
Revenue Region Nos. 11 and 12	Excise Tax Area III-Bacolod
Revenue Region Nos. 13, 14	Excise Tax Area IV-Cebu
Revenue Region Nos. 15 and 19	Excise Tax Area V-Davao
Revenue Region Nos. 16, 17 and 18	Excise Tax Area VI-Cagayan de Oro

In cases where said facilities will be used for the storage of petroleum or petroleum products or other goods subject to excise taxes, a Permit to Operate from the BIR shall be issued. Said permit shall prescribe the appropriate terms and conditions which shall include, among others, the maintenance of Official Register Books or their equivalent, joint supervision over the facilities with the BIR, through the assignment of revenue officers, and stocktaking/physical inventory taking of petroleum and petroleum products stored therein. The monitoring requirements prescribed in this Section and in the permit granted shall likewise be strictly observed.

A facility which will not be used for storage of petroleum or petroleum products or other articles subject to excise taxes, if satisfactorily established to the BIR, will be issued a Permit to Operate Exempt Facility. This notwithstanding, both Permit to Operate and Permit to Operate Exempt Facility should categorically state the goods stored therein, and should any changes be planned, an application for new permit should be made.

SEC. 5. TRANSITORY PROVISIONS. – All owners, lessors or operators of tank facilities, depots or terminals shall submit the following copies of documents to the appropriate BIR Offices according to the preceding Section within fifteen (15) days from the date of effectivity of these Regulations:

- (a) BIR Certificate of Registration;
- (b) Latest Blueprint of the Perspective Design of the whole storage facility, depot or terminal specifically containing, among others, the tanks located therein, duly approved by a licensed professional authorized by law to issue such document;
- (c) Lease or Operating Agreement, in case the whole facility, depot or terminal is actually being leased or operated by another person or entity other than the owner thereof;
- (d) Terminaling, Lease, or Storage Agreement(s) with the lessee-owner(s) of the contents of the respective tanks; and
- (e) Notarized undertaking(s) executed jointly with the respective lessee-owner(s) of the content(s) of the storage tank(s) within the facility, depot or terminal containing the tank number, description of the product and the volume of inventory thereof as of the date of effectivity of these Regulations.

The concerned BIR Offices shall issue the duly approved Permits to Operate, after evaluation/validation of the foregoing documents and the conduct of verification and ocular inspection of the facilities, depots and terminals, within thirty (30) days from receipt of such documents.

SEC. 6. PENALTIES. – Any violation of these Regulations shall be subject to the corresponding penalties under the pertinent provisions of the NIRC of 1997, as amended, and applicable regulations.

SEC. 7. SEPARABILITY CLAUSE. - If any provision of these Regulations is declared invalid by a competent court, the remainder of these Regulations or any provision not affected by such declaration of invalidity shall remain in force and effect.

SEC. 8. REPEALING CLAUSE. – All regulations, rulings or orders, or portions thereof which are inconsistent with the provisions of these Regulations are hereby revoked, repealed or amended accordingly.

SEC. 9. EFFECTIVITY. – These Regulations shall take effect after fifteen (15) days following publication in a leading newspaper of general circulation.

(Original Signed)
CESAR V. PURISIMA
Secretary of Finance

Recommending Approval:

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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