

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
**BUREAU OF INTERNAL REVENUE**  
Quezon City

August 15, 2011

**REVENUE MEMORANDUM CIRCULAR NO. 34-2011**

**Subject:** Circularization of the relevant excerpts from the En Banc Supreme Court Decision in GR No. 193007, on the imposition of Value Added Tax on Toll Fees.

**To:** All Internal Revenue Officials and Employees Concerned

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For the information and guidance of all internal revenue officials and employees concerned, quoted hereunder is the relevant portion of the En Banc Supreme Court Decision in GR No. 193007 (promulgated July 19, 2011), concerning Value Added tax on Toll Fees:

“x x x

In fine, the Commissioner of Internal Revenue did not usurp legislative prerogative or expand the VAT law’s coverage when she sought to impose VAT on tollway operations. Section 108(A) of the Code clearly states that services of all other franchise grantees are subject to VAT, except as may be provided under Section 119 of the Code. Tollway operators are not among the franchise grantees subject to franchise tax under the latter provision. Neither are their services among the VAT-exempt transactions under Section 109 of the Code.

If the legislative intent was to exempt tollway operations from VAT, as petitioners so strongly allege, then it would have been well for the law to clearly say so. Tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken. But as the law is written, no such exemption obtains for tollway operators. The Court is thus duty-bound to simply apply the law as it is found.

Lastly, the grant of tax exemption is a matter of legislative policy that is within the exclusive prerogative of Congress. The Court’s role is to merely uphold this legislative policy, as reflected first and foremost in the language of the tax statute. Thus, any unwarranted burden that may be perceived to result from enforcing such policy must be properly referred to Congress. The Court has no discretion on the matter but simply applies the law.

The VAT on franchise grantees has been in the statute books since 1994 when R.A. 7716 or the Expanded Value-Added Tax law was passed. It is only now, however, that the executive has earnestly pursued the VAT imposition against

tollway operators. The executive exercises exclusive discretion in matters pertaining to the implementation and execution of tax laws. Consequently, the executive is more properly suited to deal with the immediate and practical consequences of the VAT imposition.

x x x”

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

(Original Signed)

**KIM S. JACINTO-HENARES**

Commissioner of Internal Revenue