

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

September 30, 2013

REVENUE MEMORANDUM CIRCULAR NO. 64-2013

SUBJECT: Circularizing Revocation of BIR Ruling No. NSNP-(S30C-028) 726-09 dated 20 November 2009

TO: All Internal Revenue Officials, Employees and Others Concerned

This refers to the revocation of *BIR Ruling No. NSNP-(S30C-028) 726-09 dated 20 November 2009* granting income tax exemption to Philippine Canine Club Incorporated (PCCI) under Section 30 (C) of the Tax Code of 1997.

PCCI, with Taxpayer Identification No. 917-096-000, is a non-stock, non-profit corporation registered with the Securities and Exchange Commission on 21 March 1963 under Certificate of Registration No. 22739. Its registered office and place of business is located at Room 206 Hillcrest Condominium, 1616 E. Rodriguez Sr. Avenue, Cubao, Quezon City. Its purposes are:

1. to maintain and protect the integrity of its Registry of purebred dogs, to publish an official Registry of purebred dogs (the 'stud book');
2. to adopt and enforce uniform rules regulating and governing purebred dog registration and purebred dog events;
3. to regulate the conduct of persons and organizations interested in breeding, registering, selling, purchasing, exhibiting and running purebred dogs;
4. to prevent, detect, and punish frauds in connection therewith;
5. to protect the interests of its members, to publish an official kennel gazette; and
6. generally to do everything to advance the study, breeding, exhibiting, running and maintenance of purebred dogs.

PCCI's funding for its activities are principally sourced from registration and membership fees from its members. Likewise, other funds are sourced through fees collected from dog shows and competitions and other incidental activities such as certification and advertising fees.

On 18 July 1974, this Office, through then Commissioner Misael P. Vera, issued BIR ruling exempting it from income tax pursuant to Section 26 (H) of Presidential Decree No. 1158 otherwise known as "*A Decree To Consolidate and Codify All the Internal Revenue Laws of the Philippines*" and also known as the "*Tax Code of 1977*".

On 20 September 2009, PCCI requested for a renewal of its Certificate of Tax Exemption as a consequence of the enactment of the National Internal Revenue Code

of 1997, as amended. As a result, this Office issued *BIR Ruling No. NSNP-(S30C-028) 726-09 dated 20 November 2009*.

Please be informed that Section 30 (C) of the Tax Code of 1997 provides:

“SEC. 30. Exemptions from Tax on Corporations.- The following organizations shall not be taxed under this Title in respect to income received by them as such:

X X X

(C) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents;”

Clearly, under the above mentioned provision of the Tax Code of 1997, tax exemption under Section 30 (C) thereof is limited only to: 1) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association; or 2) a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents.

A perusal of the corporate purposes of PCCI shows that the same do not fall under Section 30 (C) of the Tax Code of 1997. PCCI does not appear to operate as a society, order, or association operating exclusively for the benefit of its members such as a fraternal organization operating under the lodge system, or mutual aid association. Neither is it organized as a nonstock corporation providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents.

In fact, PCCI’s stated purpose is merely to advance the study, breeding, exhibiting, running and maintenance of purebred dogs through the maintenance of a Registry of purebred dogs, regulating the conduct of persons and organizations interested in breeding, registering, selling, purchasing, exhibiting and running purebred dogs and preventing frauds in connection therewith.

Originally, the Certificate of Tax Exemption granted to PCCI under Section 26 (H) of PD No. 1158 refers to a club organized and operated exclusively for pleasure, for recreation, and other non-profitable purposes to wit:

“SECTION 26. Exemptions from tax on corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such —

X X X

(H) Club organized and operated exclusively for pleasure, for recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;”

However, this provision of the law was intentionally omitted when Republic Act No. 8424, also known as the “Tax Code of 1997” was enacted. *Casus omisus pro omisso habendus est*. A person, object or thing omitted from an enumeration must be held to have been omitted intentionally.¹ Therefore, income of club organized and operated exclusively for pleasure, for recreation, and other non-profitable purposes, from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees are subject to income tax. (*Revenue Memorandum Circular No. 035-2012*)

Furthermore, an investigation conducted by the Special Investigation Division shows that PCCI failed to remit Value Added Tax (VAT) from taxable years 2004 to 2012. However, under the *BIR Ruling No. NSNP-(S30C-028) 726-09 dated 20 November 2009*, PCCI was never granted exemption from VAT. Section 105 of the Tax Code of 1997 provides:

SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase “*in the course of trade or business*” means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (emphasis supplied)

¹ La Bugal-B’Laan Tribal Association Inc. vs. Ramos, G.R. No. 127882 dated 27 January 2004

Clearly, under the above mentioned provision, even non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services.² “Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.”³

PREMISES CONSIDERED, this Office hereby revokes *BIR Ruling No. NSNP-(S30C-028) 726-09 dated 20 November 2009* granting tax exemption to PCCI as the same has no legal basis.

All concerned are hereby enjoined to be guided accordingly and give this circular as wide as publicity a possible.

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

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Revocation of BIR Ruling No. NSNP-(S30C-028) 726-09

² Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355 dated 30 March 2000

³ Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corp. G.R. No. 188497 dated 25 April 2012