



BUREAU OF INTERNAL REVENUE
RECORDS MGT. DIVISION
JAN 09 2013
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REVENUE MEMORANDUM CIRCULAR NO. 1-2013

SUBJECT : Clarifying Certain Provisions of Revenue Regulations No. 17-2012 Implementing the Provisions of Republic Act No. 10351 as well as the Provisions of Revenue Memorandum Circular No. 90-2012 Providing the Initial Tax Classifications of Alcohol and Tobacco Products

TO : To All Internal Revenue Officers and Others Concerned

This Circular is hereby issued in order to clarify certain provisions of Revenue Regulations (R.R.) No. 17-2012 dated December 21, 2012, which implements the provisions of Republic Act (R.A.) No. 10351, "An Act Restructuring The Excise Tax On Alcohol and Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known As the National Internal Revenue Code (NIRC) of 1997, As Amended By Republic Act No. 9334, And For Other Purposes", as follows:

1. The provisions of R.A. No. 10351 is clear that the four percent (4%) increase in specific tax rates, effective January 1, 2014 on tobacco products under Section 144 (a) of the Tax Code of 1997, as amended, applies to all tobacco products, including chewing tobacco. Accordingly, the line which was inadvertently placed between tobacco products and chewing tobacco under the column heading entitled "2018 Onwards" of the table provided under Section 3 of RR No. 17-2012 which prescribes the revised rates and bases of the specific tax, should be disregarded.

With respect to the four percent (4%) increase in specific tax rates, effective January 1, 2018 for cigarettes under Section 144 (b) and (c) of the Tax Code of 1997, as amended, it is, likewise, clear in the provisions of R.A. No. 10351 that the increase applies to both cigarettes packed by hand and cigarettes packed by machine. Accordingly, the line that was inadvertently placed between cigarettes packed by hand and cigarettes packed by hand under the column heading entitled "2018 Onwards" of the table provided under Section 3 of RR No. 17-2012 which prescribes the revised rates and bases of the specific tax, should likewise be, disregarded.

It is well settled rule that implementing guidelines cannot prevail over the provisions of the enacted law. Hence, formalities or technicalities such as in this case of the inadvertently placed separating lines should not be construed as a substantial defect in R.R. No. 17-2012.

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2. Taxability of distilled spirits under Section 3 of R.R. No. 17-2012.

Section 141 of the Tax Code of 1997, as amended, defined "Spirits or distilled spirits", for purposes of excise taxation, is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.

In line with the aforesaid definition of distilled spirits, all end-products, such as ethyl alcohol, ethanol or other similar products or mixtures are separate and distinct distilled spirits apart from the above-enumerated alcoholic products (i.e., whisky, brandy, rum, etc.) and, therefore, the same should be likewise subjected to the imposition of a separate and distinct excise tax prescribed under the same Section of the Tax Code.

Illustration:

No. 1 Swing Company, a registered distiller engaged in the production of ethyl alcohol. It sells ethyl alcohol to (a) Compounders, (b) Rectifiers and (c) Traders.

Question: Is Swing Company liable to pay the excise tax due on its removals to (a) Compounders, (b) Rectifiers and (c) Traders? What will be the tax base for purposes of computing the ad valorem tax?

Answer: (a) For Compounders: Yes. Swing Company is liable to pay the excise tax due on its removal to compounders since ethyl alcohol, as a distinct and separate distilled spirits, is subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The tax base, for purposes of computing the ad valorem tax, shall be the suggested net retail price equivalent to the actual selling price of the ethyl alcohol per sales invoice, net of value-added tax and excise tax.

(b) For Rectifiers: Yes. Swing Company is liable to pay the excise tax due on its removal to rectifiers since ethyl alcohol, as a distinct and separate distilled spirits, is subject to excise tax. However, due to Section 137 of the Tax Code of 1997, as amended, the ethyl alcohol intended for rectification may be removed without the prepayment of the excise tax subject to the filing of a joint bond with the respective rectifiers.

(c) For Traders: Yes. Swing Company is liable to pay the excise tax due on its removal to traders since ethyl alcohol, as a distinct and separate distilled spirits, is subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The tax base, for purposes of computing the ad valorem tax, shall be the suggested net retail

price equivalent to the actual selling price of the ethyl alcohol per sales invoice, net of value-added tax and excise tax.

No. 2 Ballet Corp., a registered rectifier, rectifies alcohol bought from Swing Company, a distillery. The rectified alcohol will be sold to compounders and pharmaceutical companies.

Question: Is Ballet Corp. liable to pay the excise tax due on rectified alcohol?

Answer: Yes. Since the ethyl alcohol sold by Swing Company to Ballet Corp. was not subjected to excise tax in view of their joint bond duly filed with the BIR, Ballet Corp. is liable therefore to pay the excise tax due on its removal of rectified alcohol including the losses, if any,

Question: What will be the tax base to be used by Ballet Corp. in computing the ad valorem tax?

Answer: The tax base, for purposes of computing the ad valorem tax, shall be the suggested net retail price equivalent to the actual selling price of ethyl alcohol per sales invoice, net of value-added tax and excise tax.

No. 3 Gang Nam Corp., a registered compounder, imports ethyl alcohol as raw materials in the manufacture of compounded liquors.

Question: Is Gang Nam Corp. liable to pay the excise tax due on its importation of ethyl alcohol? If yes, what will be the tax base in computing the ad valorem tax?

Answer: Yes. Gang Nam Corp. is liable to pay the excise tax due on the importation since ethyl alcohol, as a distinct and separate distilled spirits, is subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The actual value used by the Bureau of Customs in determining tariff and customs duties, net of value-added tax and excise tax shall be considered as the suggested net retail price for purposes of using the same as tax base in computing the ad valorem tax.

Question: Is Gang Nam Corp. also liable on its removal of compounded liquors?

Answer: Yes. Compounded liquors, as a separate and distinct distilled spirits, are likewise subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The tax base shall be the net retail price as declared in the sworn statement as submitted by Gang Nam Corp.

No. 4 Cha Cha Company is engaged in the importation-trading of ethyl alcohol. Its customers include compounders, pharmaceutical companies, traders, industrial users and others.



Question: Is Cha Cha Company liable to pay the excise tax due on its importation of ethyl alcohol? If yes, what will be the tax base in computing the ad valorem tax?

Answer: Yes. Cha Cha Company is liable to pay the excise tax due on the importation since ethyl alcohol, as a distinct and separate distilled spirits, is subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The tax base of computing the ad valorem shall be the actual selling price per sales invoice issued by Cha Cha Company to its buyer. However, for purposes of computing the initial payment of the ad valorem at the time of importation of the ethyl alcohol, the actual value used by the Bureau of Customs in determining tariff and customs duties, net of value-added tax and excise tax shall be used as the taxable base. Accordingly, the additional ad valorem tax resulting from the difference between the computed ad valorem tax due based on the actual selling price and the ad valorem tax actually paid to the Bureau of Customs shall be paid by Cha Cha Company to the appropriate BIR Office immediately without prior notice of assessment.

No. 5 Tango Corp. is engaged in the importation-trading of medicinal preparations flavoring extracts and other similar preparations with distilled spirits forming part as chief ingredient thereof.

Question: Is Tango Corp. liable to pay the excise tax due on its importation of the said preparations? If yes, what will be the tax base in computing the ad valorem tax?

Answer: Yes. Tango Corp. is liable to pay the excise tax due on the importation of said preparations since the provisions of R.A. No. 10351 are clear that such preparations with distilled spirits forming part as chief ingredient thereof are likewise subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The tax base of computing the ad valorem shall be the actual selling price per sales invoice issued by Tango Corp. to its buyer. However, for purposes of computing the initial payment of the ad valorem at the time of importation of such preparations, the actual value used by the Bureau of Customs in determining tariff and customs duties, net of value-added tax and excise tax shall be used as the taxable base. Accordingly, the additional ad valorem tax resulting from the difference between the computed ad valorem tax due based on the actual selling price and the ad valorem tax actually paid to the Bureau of Customs shall be paid by Tango Corp. to the appropriate BIR Office immediately without prior notice of assessment.


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No. 6 Waltz, Inc., a registered compounder, imports flavoring extracts, having distilled spirits as chief ingredient, to be used as one of the raw materials in the manufacture of compounded liquors.

Question: Is Waltz, Inc. liable to pay the excise tax due on the importation of flavoring extracts? If yes, what will be the tax base in computing the ad valorem tax?

Answer: Yes. Waltz, Inc. is liable to pay the excise tax due on the importation since flavoring extracts, as a distinct and separate distilled spirits, is subject to excise tax pursuant to Section 141 of the Tax Code, as amended. The actual value used by the Bureau of Customs in determining tariff and customs duties, net of value-added tax and excise tax shall be considered as the suggested net retail price for purposes of using the same as tax base in computing the ad valorem tax.

This Circular is, likewise, issued in order to further amend and clarify the initial tax classifications of alcohol and tobacco products published under Revenue Memorandum Circular (RMC) No. 90-2012 dated December 27, 2012, as follows:

1. The fermented liquor, "Gold Eagle Beer" in 320 ml. bottle, under Annex A-1, page 2, Schedule II, line 10 was inadvertently placed under the higher price category under "NRP is more than P50.60", considering that the reflected price was P56.25 per liter and, therefore, erroneously tax classified under the higher tax rate at P20.00. The reflected price was the suggested GROSS selling price, instead of the prescribed suggested NET retail price which should have been P39.81 per liter, falling under the lower tax classification. Accordingly the correct initial tax classification of "Gold Eagle Beer" in 320 ml. bottle should be under the tax rate of P15.00 per liter.
2. With respect to other alcohol and tobacco products that were not included in any of the Annexes of the said RMC, their respective initial tax classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the manufacturer and importer, as the case maybe.

All revenue officials concerned are hereby directed to give this Circular as wide a publicity as possible.

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KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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