

**REPUBLIKA NG PILIPINAS  
KAGAWARAN NG PANANALAPI  
KAWANIHAN NG RENTAS INTERNAS**

January 3, 2006

**REVENUE REGULATIONS NO. 3-2006**

**SUBJECT** : Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto

**TO** : All Internal Revenue Officials and Others Concerned

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**SECTION 1. SCOPE.** – Pursuant to the provisions of Section 244 in relation to Section 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated to implement the provisions of Republic Act No. 9334 “An Act increasing the specific tax rates imposed on alcohol and tobacco products amending for the purpose Sections 141, 142, 143, 144, and 145 of the National Internal Revenue Code of 1997, as amended”, as well as to clarify certain provisions of existing revenue regulations on alcohol and tobacco products.

**SEC. 2. DEFINITION OF TERMS.** – For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:

- (a) **The ACT** – shall refer to Republic Act (R.A.) No. 9334;
- (b) **ALCOHOL PRODUCTS** – shall refer to distilled spirits, wines and fermented liquors as generally classified under Chapter III, Title VI of the National Internal Revenue Code (NIRC) of 1997, as amended;
- (c) **TOBACCO PRODUCTS** – shall refer to tobacco products, cigars, cigarettes packed by hand or cigarettes packed by machine as generally classified under Chapter IV, Title VI of the NIRC of 1997, as amended;
- (d) **VARIANT OF A BRAND** – shall refer to a brand of alcohol or tobacco products on which a modifier is prefixed and/or suffixed to the root name of the brand.

For this purpose, the term “root name” shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: *Provided*, That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).

Examples of root name: “L & M“, “βΩ”, “10”, “Pall Mall”, “Blue Ice”, “Red Horse”, etc.

The term “modifier” shall refer to a word, a number, or a combination of words and/or numbers that specifically describe the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variants of such brands.

Examples of modifiers: For cigarettes: “Filter”, “Menthol”, “Kings”, “100’s”, “American Blend”, “International”, etc.

For beer : “Light”, “Dry”, “Ice”, “Lager”, “Hard”, “Premium”, etc.

Any variation in the color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the brand originally registered with the BIR shall not, by itself, be deemed an introduction of a new brand or a variant of a brand: *Provided*, That all instances of such variation shall require a prior written permit from the BIR.

In case such BIR-registered brand has more than one (1) tax classification as a result of the shift in the manner of taxation from *ad valorem* tax to specific tax under R.A. No. 8240, the highest tax classification shall be applied to such brand bearing a new label, package, or volume content per package, subject to the provisions of the immediately preceding paragraph.

## **ILLUSTRATION:**

No. 1 - XYZ, Inc., a cigarette manufacturer, owns the brand, “KC” that is packaged in soft and hard packs. “KC” is an existing brand that is being manufactured since 1995. “KC” in soft pack is tax classified under low-priced tax category while “KC” in hard pack is under the medium-priced tax category. In 2005, the current net retail prices per pack of “KC” in soft and hard packs are P8.00 and P16.00, respectively. “XYZ, Inc. intends to introduce “KC” in soft tin cans with a suggested net retail price of P 15.00 per pack falling under the high-priced tax category.

Question: What is the proper tax classification of “KC” in soft tin cans upon introduction in 2005?

Answer: “KC” in soft tin cans shall be tax classified as medium-priced brand following the tax classification of “KC” in hard pack considering that the suggested net retail price per pack of “KC” in soft tin cans is lower than the current net retail price per pack of “KC” in hard pack.

**Question:** Assuming that the current net retail prices of “KC” in soft and hard packs are P8.00 and P14.00, respectively, what is now the proper tax classification “KC” in soft tin cans upon its introduction in the domestic market in 2005?

**Answer:** “KC” in soft tin cans shall be classified under the premium-priced category of P25.00 per pack. It shall be treated as a variant of “KC” in soft and hard packs since its suggested net retail price is higher than the current net retail prices of the originally registered “KC” brands.

In case a letter(s), number(s), symbol(s) or word(s) is/are deleted from or replaced by another letter(s), number(s), symbol(s) or word(s) in the root name of a previously BIR-registered brand, such that the introduction of the said brand bearing such change(s) shall ride on the popularity of the said previously registered brand, the same shall be classified as a variant of such previously registered brand: *Provided*, That where the introduction of such brand by another manufacturer or importer will give rise to any legal action with respect to infringement of patent or unfair competition, such brand shall be considered a variant of such previously registered brand.

#### **ILLUSTRATION:**

No. 2 -

<b>ROOT NAME</b>	<b>MODIFIER IS PREFIXED</b>	<b>MODIFIER IS SUFFIXED</b>	<b>MODIFIED ROOT NAME</b>
L & M	Kings L & M	L & M Lights	M & L
10	Perfect 10	10 Menthols	Ten
Blue Ice	Wild Blue Ice	Blue Ice Supreme	Blue Iced
Red Horse	Flying Red Horse	Red Horse Premium	Reddish Horse
Pall Mall	Long Pall Mall	Pall Mall Filter	Pal Mall

- (e) **EXISTING BRAND** – shall refer to a brand of alcohol or tobacco products which is included in Annexes A, B, C and D of R.A. No. 8240 and Revenue Regulations (RR) Nos. 1-97 and 2-97;
- (f) **NEW BRAND** – shall refer to a brand that is registered and introduced in the market after the date of effectivity of R. A. No. 8240;
- (g) **NET RETAIL PRICE** – shall refer to the price, as determined by the BIR through a survey to be conducted by itself, or by the National Statistics

Office (NSO) when deputized for the purpose by the BIR, at which an alcohol or tobacco product is sold at retail in such number of major supermarkets or retail outlets as are prescribed by the Act, excluding the amount intended to cover the applicable excise tax and value-added tax.

- (h) **SUGGESTED NET RETAIL PRICE** – shall refer to the net retail price at which a new brand of locally manufactured or imported alcohol or tobacco product is intended to be sold by the manufacturer or importer at retail in major supermarkets or retail outlets in the prescribed minimum number of Revenue Regions for brands with national or regional markets;
- (i) **MARKETED NATIONWIDE** – shall refer to a brand that is commercially produced and marketed, as defined herein, in all the Revenue Regions in Metro Manila and in at least fifty one percent (51%) of all the other Revenue Regions;
- (j) **METRO MANILA and REGIONS** – when used in these Regulations, the term “region/s” shall refer to the revenue regions composed of revenue district offices established by the BIR for internal revenue tax purposes. The coverage of the revenue regions are as follows:

<b>REVENUE REGION NO.</b>	<b>PROVINCES/CITIES/MUNICIPALITIES COVERED</b>
<b>METRO MANILA REVENUE REGIONS</b>	
5 – Valenzuela, Metro Manila	Province of Bulacan, Cities of Valenzuela and Caloocan, and Municipalities of Malabon and Navotas
6 – Manila	City of Manila including Palawan, Romblon and Occidental Mindoro
7 – Quezon City	Province of Rizal, Quezon City, San Juan, Mandaluyong City, Marikina City, Pasig City and Cainta City
8 – Makati City	Cities of Makati, Paranaque, Las Piñas, Muntinlupa and Pasay and Municipalities of Taguig and Pateros
<b>OTHER REVENUE REGIONS</b>	
1 – Calasiao, Pangasinan	Provinces of Ilocos and Pangasinan
2 – Cordillera Administrative Region (CAR)	Abra, Mountain Province, Benguet, Kalinga-Apayao, Ifugao and Baguio City
3 – Tuguegarao, Cagayan	Cagayan, Isabela, Quirino, Nueva Vizcaya
4 – San Fernando, Pampanga	Pampanga, Tarlac, Zambales, Bataan, Aurora, Nueva Ecija
9 – San Pablo City	Laguna, Quezon, Marinduque Batangas, Cavite, Oriental Mindoro
10 – Legazpi City	Bicol Region
11 – Iloilo City	Iloilo, Antique, Aklan, Capiz

12 – Bacolod City	Negros Oriental and Occidental, Dumaguete City and Bacolod City
13 – Cebu City	Provinces of Cebu and Bohol
14 – Tacloban City	Provinces of Samar and Leyte
15 – Zamboanga City	Basilan, Sulu, Tawi-tawi, Pagadian, Zamboanga del Norte and Zamboanga del Sur, and Zamboanga City
16 – Cagayan de Oro City	Cagayan de Oro, Bukidnon, Marawi City, Iligan City, Gingoog City, Osamis Oriental and Osamis Occidental
17 – Butuan City	Agusan del Norte and Agusan del Sur, Surigao del Norte and Surigao del Sur
18 – Cotabato City	Province Cotabato, General Santos City
19 – Davao City	Davao del Norte, Davao del Sur, Davao Oriental and Davao City

The term “Metro Manila” when used in these Regulations shall refer to the Metro Manila revenue regions enumerated above.

- (k) **CLASSIFICATION** – shall refer to the specific range of net retail prices of brands of alcohol or tobacco products upon which is levied, assessed and collected a rate of excise tax specified by the Act, inclusive of the tax rates imposed on certain brands under Annexes A, B, C and D of R.A. No. 8240, as implemented by Revenue Regulations No. 17-99;
- (l) **COMMERCIALLY PRODUCED AND MARKETING** – shall refer to the production or importation and subsequent sale of a brand of alcohol or tobacco product, with or without profit, for every three-month period where volume is not less than twenty five percent (25%) of the quarterly average of the actual volume of importations or removals for each brand of alcohol or tobacco product during the immediately preceding seven (7) quarters; Provided, That the quarterly average shall in no case be less than the volumes set forth in the table below; Provided further, That brands or variants failing to meet these requirements shall be treated as new brands and subject to validation and revalidation requirements of these Regulations:

PRODUCT	MARKETING NATIONWIDE	MARKETING REGIONALLY (per region)
<b>DISTILLED SPIRITS</b>	6,000 cases at 9 liters per case	500 cases at 9 liters per case
<b>FERMENTED LIQUORS</b>	50,000 liters	4,167, liters
<b>SPARKLING WINES</b>	3,600 cases at 9 liters per case	300 cases at 9 liters per case
<b>CIGARETTES PACKED BY MACHINE</b>	360 cases at 500 packs per case	30 cases at 500 packs per case

## ILLUSTRATION:

No. 3

### Cigarette Brand “X” (marketed nationwide)

Total volume of removals during the last 7 quarters	105,000 cases
Quarterly average (105,000 cases ÷ 7)	15,000 cases
25% of quarterly average	3,750 cases
Minimum volume requirement per table	360 cases
Actual volume removed during the 4 <sup>th</sup> quarter of 2005	1,950 cases

Since the actual volume of cigarette brand “X” in the 4<sup>th</sup> quarter of 2005 is less than 25% of the quarterly average volume but exceeds the minimum volume requirement as shown in the table above, the brand is not considered commercially produced and marketed.

- (m) **PRODUCT LAUNCH** – shall refer to the introduction in the domestic market of a brand or variant of an alcohol or tobacco product, whether locally manufactured or imported, that satisfies the conditions for being commercially produced and marketed as prescribed in Section 2(l) of these Regulations.
- (n) **IMPORTATION** – shall refer to the introduction of an alcohol or tobacco product from a foreign country into the Philippine customs’ territory or into a duly chartered economic and freeport zones and duty-free shops, whether for sale or not. It commences when the carrying vessel or aircraft enters the Philippine jurisdiction with the intention to unload or keep for storage therein such product. It is deemed terminated upon payment of duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the Bureau of Customs. For purposes of these Regulations, any alcohol or tobacco product entering the Philippines through the freeport and special economic zones shall be deemed to have entered the Philippine customs’ territory upon unloading thereof from the carrying vessel.
- (o) **TRANSSHIPMENT** – shall refer to the transport or shipment of alcohol or tobacco products from a foreign port into any port(s) of the Philippines strictly for subsequent shipment to a foreign port or destination where the shipping manifest pertaining thereto specifically states that the destination therefor is for a foreign port without introducing the same into the Philippine customs territory;
- (p) **SUITABLY DENATURED** – shall refer to the condition of ethyl alcohol when a material or substance, known as denaturant, has been added to the ethyl alcohol, in accordance with the approved formula of the BIR, to destroy

the character of the same and making the added denaturant difficult to separate therefrom.

- (q) **DEALER IN DENATURED ALCOHOL** – shall refer to a person, natural or juridical, who, other than as denaturer, sells or offers for sale or delivery to others, for himself or on commission, denatured alcohol in the original containers as bought or acquired by him without opening the same and breaking the internal revenue labels affixed thereto.
- (r) **MEDICINAL PREPARATION** – shall refer to any compounded substance prepared and used as a remedy or cure for alleviating, palliating, or preventing some diseases or body disorders whether applied orally, externally or any other manner of application. For this purpose, any such substance using denatured alcohol as its chief ingredient shall fall within the purview of this definition.
- (s) **HEADS and TAILS** – “Heads” shall refer to distillation fraction containing a high percentage of low boiling components such as aldehydes. In batch distillation, the first fraction constitutes the heads.

“Tails” shall refer to a distillation fraction containing components with higher boiling points. In batch distillation, the tails are obtained at the tail end of the process.

**SEC. 3. REVISED RATES AND BASES OF THE SPECIFIC TAX.** – There shall be levied, assessed and collected a specific tax on alcohol or tobacco products, in accordance with the following schedule:

PRODUCT	EFFECTIVE January 1, 2005	EFFECTIVE January 1, 2007	EFFECTIVE January 1, 2009	EFFECTIVE January 1, 2011
<b>A. ALCOHOL PRODUCTS</b>				
(1) Distilled Spirits	<u>Per proof liter</u>	<u>Per proof liter</u>	<u>Per proof liter</u>	<u>Per proof liter</u>
(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane;	P 11.65	P 12.58	P 13.59	P 14.68
(b) If produced from raw materials other than those enumerated in the preceding				

<p>paragraph, and the net retail price (excluding the excise and value-added taxes) per bottle of seven hundred fifty milliliter (750 ml.) volume capacity is:</p> <p>(1) Less than Two Hundred and Fifty Pesos (P250.00)</p> <p>(2) Two Hundred and Fifty Pesos (P250.00) up to Six Hundred and Seventy Five Pesos (P675.00)</p> <p>(3) More than Six Hundred and Seventy Five Pesos (P675.00)</p>	<p>P126.00</p> <p>P252.00</p> <p>P504.00</p>	<p>P 136.08</p> <p>P 272.16</p> <p>P 544.32</p>	<p>P 146.97</p> <p>P 293.93</p> <p>P 587.87</p>	<p>P 158.73</p> <p>P 317.44</p> <p>P 634.90</p>
<p>(2) Wines</p> <p>(a) Sparkling wines/champagnes, where the net retail price (excluding the excise and value-added taxes) per bottle, regardless of proof is:</p> <p>(1) Five Hundred Pesos (P500.00) or less</p> <p>(2) More than Five Hundred Pesos (P500.00)</p> <p>(b) Still wines containing fourteen percent (14%) of alcohol by volume or less</p> <p>(c) Still wines containing more than fourteen percent (14%) [of alcohol by volume] but not more than twenty-five percent (25%) of alcohol by volume</p>	<p><u>Per liter</u></p> <p>P145.60</p> <p>P436.80</p> <p>P17.47</p> <p>P 34.94</p>	<p><u>Per liter</u></p> <p>P 157.25</p> <p>P 471.74</p> <p>P 18.87</p> <p>P 37.74</p>	<p><u>Per liter</u></p> <p>P 169.83</p> <p>P 509.48</p> <p>P 20.38</p> <p>P 40.76</p>	<p><u>Per liter</u></p> <p>P 183.42</p> <p>P 550.24</p> <p>P 22.01</p> <p>P 44.02</p>



(d) Fortified wines containing more than twenty-five (25%) percent of alcohol by volume shall be taxed as distilled spirits	Depending on the tax rates provided in Items A.1.(a) and A.1.(b)	Depending on the tax rates provided in Items A.1.(a) and A.1.(b)	Depending on the tax rates provided in Items A.1.(a) and A.1.(b)	Depending on the tax rates provided in Items A.1.(a) and A.1.(b)
<p>(3) Fermented liquors, where the net retail price (excluding excise and value-added taxes) per liter of volume capacity is:</p> <p>(a) Less than Fourteen Pesos and Fifty Centavos (P14.50)</p> <p>(b) Fourteen Pesos and Fifty Centavos (P14.50) up to Twenty-two Pesos (P22.00)</p> <p>(c) More than Twenty-two Pesos (P22.00)</p> <p>Fermented liquors brewed and sold at microbreweries or small establishments such as pubs and restaurants, regardless of the net retail price.</p>	<p><u>Per liter</u></p> <p>P 8.27</p> <p>P12.30</p> <p>P16.33</p> <p>P16.33</p>	<p><u>Per liter</u></p> <p>P 8.93</p> <p>P 13.28</p> <p>P 17.64</p> <p>P 17.64</p>	<p><u>Per liter</u></p> <p>P 9.64</p> <p>P 14.34</p> <p>P 19.05</p> <p>P 19.05</p>	<p><u>Per liter</u></p> <p>P 10.41</p> <p>P 15.49</p> <p>P 20.57</p> <p>P 20.57</p>
<b>B. TOBACCO PRODUCTS</b>				
<p>(1) Tobacco Products</p> <p>(a) Tobacco twisted by hand or reduced into a condition to be consumed in any manner</p>	<u>Per k.g.</u>	<u>Per k.g.</u>	<u>Per k.g.</u>	<u>Per k.g.</u>

other than the ordinary mode of drying and curing;	P 1.00	P 1.06	P 1.12	P 1.19
(b) Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened; and	P 1.00	P 1.06	P 1.12	P 1.19
(c) Fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs and sweepings of tobacco;	P 1.00	P 1.06	P 1.12	P 1.19
(2) Chewing tobacco, unsuitable in any other manner	P0.79	P 0.84	P 0.89	P 0.94
(3) Cigars, where the net retail price (excluding excise and value-added taxes) per cigar is:				
(a) Five Hundred Pesos (P500.00) or less	Ten Percent (10%) of the net retail price	Ten Percent (10%) of the net retail price	Ten Percent (10%) of the net retail price	Ten Percent (10%) of the net retail price
(b) More than Five Hundred Pesos (P500.00)	Fifty Pesos (P50.00) plus Fifteen Percent (15%) of the net retail price in excess of Five Hundred Pesos (P500)	Fifty Pesos (P50.00) plus Fifteen Percent (15%) of the net retail price in excess of Five Hundred Pesos (P500)	Fifty Pesos (P50.00) plus Fifteen Percent (15%) of the net retail price in excess of Five Hundred Pesos (P500)	Fifty Pesos (P50.00) plus Fifteen Percent (15%) of the net retail price in excess of Five Hundred Pesos (P500)
	<u>Per pack</u>	<u>Per pack</u>	<u>Per pack</u>	<u>Per pack</u>
(4) Cigarettes packed by hand	P2.00	P 2.23	P 2.47	P 2.72
(5) Cigarettes packed by machine, where the net retail price (excluding excise and value-added taxes) per pack is:				

(a) Below Five Pesos (P5.00)	P2.00	P 2.23	P 2.47	P 2.72
(b) Five Pesos (P5.00) but does not exceed Six Pesos and Fifty Centavos (P6.50)	P6.35	P 6.74	P 7.14	P 7.56
(c) More than Six Pesos and Fifty Centavos (P6.50) but does not exceed Ten Pesos (P10.00)	P10.35	P 10.88	P 11.43	P 12.00
(d) More than Ten Pesos (P10.00)	P25.00	P 26.06	P 27.16	P 28.30

### ILLUSTRATION:

#### No. 4 - Computation of *ad valorem* tax due on cigars

Facts: Cost to manufacture per box of 25 cigars (excluding cost of wooden box)	P 1,000
Selling and administrative expenses per box	500
Cost of wooden box	2,500
Retail selling price per box of cigar, net of VAT and excise tax	5,000

Question 1: How much is the taxable base?

Answer : The taxable base is P200 per cigar (P5,000/25 cigars)

Question 2: Is the cost of wooden box deductible from the taxable base considering that it is not a tobacco product?

Answer : No, the cost of the wooden box is not deductible because it is considered as the primary container of the product and the cigars could not be sold in a marketable condition without the said container.

**SEC. 4. PROHIBITION AGAINST RECLASSIFICATION OF CERTAIN BRANDS OF ALCOHOL AND TOBACCO PRODUCTS.** – The tax classification of the following brands of alcohol and tobacco products shall remain in force until revised by Congress:

- (a) Brands enumerated in Annexes “A”, “B”, “C” and “D” of R. A. No. 8240;
- (b) Brands listed in RR Nos. 1-97 and 2-97; and
- (c) New brands introduced in the domestic market between January 1, 1997 and December 31, 2003.

With respect to any of the brands listed in Annexes “A”, “B”, “C” and “D” of R.A. No. 8240, the owner of the brand may file with the BIR a notarized request for the delisting thereof from the said Annexes. The filing of such request shall be deemed a waiver of the statutory protection against reclassification of such brand; *Provided*, further, that in the event that the same brand shall be manufactured or imported by another entity subsequent to the filing of such request, such brand shall be considered a new brand subject to the prohibition on downward reclassification prescribed under Section 5 of these Regulations.

#### **ILLUSTRATIONS:**

- No. 5 - FGH Company, a cigarette manufacturer, owns the brand “Perfect 10” which was registered on October 1, 1996 and included among the brands listed in annexes of RA No. 8240. The said brand was produced and marketed from November 1996 until December 2000. On January 5, 2005, the company reintroduced the said brand in the market.

Question: What will be the classification of the brand when it was re-introduced in the market on January 5, 2005?

Answer: Upon re-introduction of “Perfect 10” in the market on January 5, 2005, it will be classified as an existing brand because it is listed in the annexes of RA No. 8240. Accordingly, the said brand will enjoy the legislative protection from tax reclassification.

- No. 6 - Brand “Gemini” is a locally manufactured beer listed in RR No. 2-97 falling under the low-priced tax bracket. It is not included in the list of brands in Annex “C” of R.A. No. 8240. The said brand is no longer sold in the market since December 1996. On June 8, 2005, CPI Corporation, the manufacturer of “Gemini”, removed from its place of production a number of cases of said brand for sale to the public. Upon its re-introduction in the market, the said brand of beer will be sold at a net retail price of P16.00 per liter.

Question: Will the said brand enjoy the benefits accorded to existing brands with respect to the prohibition against reclassification?

Answer: Yes, Gemini beer, being listed in RR No. 2-97 and considered an existing brand, will still enjoy the legislative protection from tax reclassification.

**SEC. 5. DOWNWARD RECLASSIFICATION OF A BRAND OF ALCOHOL OR TOBACCO PRODUCT.** - Any downward reclassification of a brand of alcohol or tobacco product that is duly registered with the BIR, on or after January 1, 2005, which will

reduce the tax imposed herein, or the payment thereof, shall be prohibited. The prohibition shall also apply to a brand enumerated in Annexes “A”, “B”, “C” and “D” of R.A. No. 8240 and RR Nos. 1-97 and 2-97 with tax rates imposed other than the regular tax rates prescribed in Section 3 hereof, including any other brand of alcohol or tobacco product that was introduced before the date of effectivity of the Act.

#### **ILLUSTRATIONS:**

- No. 7            Assuming that “Gemini” is classified in RR No. 2-97 as a medium-priced brand, with the actual specific tax rate of P12.50 per liter instead of P10.25 per liter.

Question:      What will be the applicable excise tax rate once the brand is reintroduced on June 8, 2005 if the current net retail price of “Gemini” is P14.00 per liter?

Answer:        Because of the prohibition on the reduction of tax payments per brand, “Gemini” shall still pay the excise tax of P12.50 per liter instead of excise tax of P8.27 per liter imposed on low-priced brand once it is reintroduced in the market in June 2005, subject to the validation and revalidation requirements.

- No. 8      -      “Congress”, an imported cigarette brand, is registered with the BIR and sold within the customs territory under the premium-priced tax category with a tax rate of P25.00 per pack. In 2005, OMP, Inc., a local cigarette manufacturer, intends to produce the said brand locally. If it will be introduced in the market, its suggested net retail price will be P9.00 per pack with a tax rate of P10.35 per pack.

Question:      What will be the applicable tax rate once the said brand is locally produced and marketed by OMP, Inc.?

Answer:        Since “Congress” is already registered with the BIR under the premium-priced tax category, the tax rate of P25.00 per pack shall be applied because of the prohibition against downward reclassification of the present categories of brands.

- No. 9      -      PQS, Inc., a cigar manufacturer, will remove and sell 500 pieces of its cigar brand “Capre” on January 20, 2005. The cigars will be sold at retail, net of VAT and excise tax, at P5.00 per piece.

Question:      What is the applicable excise tax rate on PQS, Inc.’s removal of “Capre” on January 20, 2005?

Answer:        Due to the prohibition on downward reclassification,

PQS, Inc. should apply the tax rate of P1.12 per cigar imposed under R.A. 8240 on its removal of “Capre” instead of the resulting ad valorem tax due per cigar of P0.50 (10% of the net retail price of P5.00) imposed under the Act.

**SEC. 6. TAX CLASSIFICATION OF A NEW BRAND, OR A VARIANT OF A BRAND, THAT WAS INTRODUCED BETWEEN JANUARY 1, 2004 AND DECEMBER 31, 2004.** – A variant of an existing brand that was introduced between January 1, 2004 and December 31, 2004 shall be classified under the highest tax classification for that brand pursuant to the provisions of R.A. No. 8240.

On the other hand, a new brand, as well as, a variant of a new brand, that is introduced before the effectivity of the Act shall be classified according to its current net retail price determined in the same manner as that for a new brand: *Provided*, That the tax classification thereof shall not be lower than the highest tax classification for such new brand or any existing variant thereof: *Provided, further*, That such brand or variant shall not be subject to the minimum volume requirements for commercial production and marketing prescribed under Section 2 (l) of these Regulations: *Provided, finally*, That the same shall still be subject to the validation and revalidation requirements under Sections 25 and 8 hereof.

**SEC. 7. TAX CLASSIFICATION OF A BRAND OR VARIANT OF AN ALCOHOL OR TOBACCO PRODUCT INTRODUCED BEGINNING JANUARY 1, 2005 .** – A new brand, a variant of an existing brand and a variant of a new brand of alcohol or tobacco product that is introduced in the domestic market beginning January 1, 2005 shall be initially classified according to its suggested net retail price as declared in the manufacturer’s or importer’s sworn statement prescribed by these Regulations: *Provided*, That the classification of a variant of an existing brand and a variant of a new brand shall not, in any case, be lower than the highest tax classification for that brand; *Provided, further*, That such brand or variant must be commercially produced and marketed; otherwise, the same is subject to the validation and revalidation requirements of these Regulations.

**SEC. 8. VALIDATION AND REVALIDATION REQUIREMENTS FOR PURPOSES OF DETERMINING THE TAX CLASSIFICATION OF AN ALCOHOL OR TOBACCO PRODUCT.** – Within forty five (45) days immediately after the end of three (3) months from the product launch, the BIR or the NSO, when deputized by the BIR for the purpose, shall conduct a price survey to validate the suggested net retail price of the new brand, variant of existing brand, or variant of new brand, as declared in the manufacturer’s or importer’s sworn statement, against the surveyed net retail price. Based on the results of the price survey, the BIR shall determine the correct tax bracket to which such brand of alcohol or tobacco product shall be classified.

Within forty five (45) days immediately after the end of eighteen (18) months from such initial validation, the BIR or the NSO, when deputized by the BIR for the purpose, shall conduct another price survey to revalidate the net retail price against the surveyed net retail price as of the time of revalidation in order to determine the proper tax bracket to which such

brand shall be classified: *Provided*, That the minimum requirements on ‘commercial production and marketing’ of the brand have been continuously satisfied during the entire validation period; *Provided*, further, that another revalidation shall be conducted in the event that there is willful understatement of the suggested net retail price as provided under Section 9 of these Regulations.

In the event the BIR or NSO, as the case maybe, fails to conduct the initial validation at the end of three (3) months after the product launch of the new brand, variant of existing brand and variant of new brand, the proper initial tax classification of such brand shall be based on the suggested net retail price as declared in the manufacturer’s or importer’s sworn statement.

On the other hand, in case the BIR or the NSO, as the case may be, fails to conduct the prescribed revalidation after the end of eighteen (18) months from the date of initial validation or from the time the herein prescribed minimum volume requirements for commercial production and marketing of brands has been continuously satisfied, whichever comes later, the proper tax classification for such brand based on the net retail price declared in the manufacturer’s or importer’s sworn statement shall remain.

However, the foregoing rules on validation and revalidation shall not apply if, for meritorious reasons, the BIR is prevented from conducting such validation or revalidation. Meritorious reasons shall include force majeure, court injunctions or any other events beyond the control of the BIR. Accordingly, the BIR shall, upon the cessation or lifting of such reasons or grounds, conduct the required validation or revalidation.

The following rules shall govern the implementation of the foregoing validation and revalidation requirements:

- (a) The validation and revalidation of a brand of alcohol or tobacco product shall be conducted according to such minimum number of major supermarkets - in Metro Manila, if such brand is marketed nationwide, or in regions outside Metro Manila, if such brand is marketed within such regions - prescribed as follows:

<b>PRODUCT</b>	<b>For Brands Marketed Nationwide</b>	<b>For Brands Marketed Outside Metro Manila Only</b>
(1) Distilled Spirits and Sparkling Wines	At least ten (10) major supermarkets - in Metro Manila pursuant to Section 2(j) hereof	At least five (5) major supermarkets in the region
(2) Fermented Liquors, Cigars, Cigarettes Packed by Machine	At least twenty (20) major supermarkets in Metro Manila pursuant to Section 2(j) hereof	At least five (5) major supermarkets in the region

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In case the said prescribed minimum number of major supermarkets cannot be satisfied, the conduct of validation and revalidation of such brand of alcohol and tobacco product may be made on retail outlets.

For this purpose, the manufacturer's or importer's sworn statement prescribed by these Regulations shall clearly indicate if such brand shall be marketed nationwide, or if it shall be marketed only in specific region(s). In both cases, the specific name(s) of the region(s) shall likewise be indicated: *Provided*, however, That the information in the sworn statement shall be considered confidential subject to the provisions of Sec. 270 of the NIRC of 1997, as amended.

- (b) The proper tax classification of a new brand, variant of existing brand, or variant of a new brand of alcohol or tobacco product that is marketed only within a specific region, as finally determined by the BIR, shall only be valid within the said region. In case such brand will be marketed simultaneously in more than one region, the proper tax classification shall be determined based on the highest regional net retail price thereof.

In case such brand has not yet been revalidated by the BIR but has been marketed subsequently in another region/other regions with a suggested net retail price falling under a different tax classification, the tax classification of such brand shall be based on the net retail price in the initial regional launch/initially validated net retail price, or the suggested net retail price of the brand in the current launch, whichever is higher: *Provided*, further, That in case the same brand has been marketed nationwide as defined in these Regulations, and its tax classification has already been revalidated by the BIR, the subsequent introduction thereof to other region(s) shall not give rise to the conduct of another price validation notwithstanding that the net retail price of the said brand, upon such introduction, will fall to a higher tax classification. However, in case a brand was initially introduced in one region and the tax classification thereof has been revalidated by the BIR, the subsequent introduction thereof in other regions either in simultaneous or successive manner shall not prevent the BIR from conducting the validation and/or revalidation for every introduction of the same brand to another region/other regions. The proper tax classification of such regional brand shall be considered revalidated only if the same has been launched in at least eight (8) revenue regions outside Metro Manila. Any revenue region in Metro Manila where a regional brand is to be introduced shall be considered as one region for purposes of determining the proper tax classification of such regional brand.

- (c) In case a new brand, variant of an existing brand, or variant of a new brand of alcohol or tobacco product which is initially marketed only in selected region(s) shall be subsequently launched nationwide, the provisions on the tax treatment for the subsequent regional launching as prescribed in the immediately preceding paragraphs shall apply.



- (d) In case that, as a result of the initial validation, the tax classification is higher than that declared in and paid under the manufacturer's or importer's sworn statement, the deficiency in the excise tax and interest, reckoned from the initial date of removals of the new brand, variant of the existing brand, or variant of the new brand shall be assessed and paid, upon demand, by the manufacturer or importer. With respect to the resulting variance in the tax classification between the revalidation and the initial validation, the deficiency in excise tax plus interest shall be paid, upon demand, by the manufacturer or importer, reckoned from the date of the initial removal of such brand over which the lower tax classification has been imposed by the initial validation.

In case the tax classification of the new brand, variant of the existing brand, or variant of the new brand of alcohol or tobacco product based on the suggested net retail price as declared in the manufacturer's or importer's sworn statement, and the results of the price surveys during the initial and revalidation are different, the tax rate under the highest tax classification shall be applied, for purposes of determining the proper tax classification of such brand.

- (e) Changes in the net retail price of the brand from the time of its initial launch up to the revalidation shall be monitored by the BIR. For purposes of determining the proper tax classification of the brand, the BIR shall adopt the highest net retail price thereof.
- (f) Prior to each and every regional launching of a brand, a written notice therefor shall be submitted to the BIR, together with the sworn statement prescribed by these Regulations. In case of failure to submit the same, the running of the prescribed periods for initial validation and revalidation shall not commence.

The validation and revalidation shall be conducted by the duly authorized representatives of the Commissioner of Internal Revenue, in coordination, as may be necessary, with the duly authorized representatives of the Revenue Regional Offices having jurisdiction over the major supermarkets or retail outlets.

**SEC. 9. WILLFUL UNDERSTATEMENT OF SUGGESTED NET RETAIL PRICE.** – In case the suggested net retail price of the brand as declared in the manufacturer's or importer's sworn statement is understated by at least fifteen percent (15%) of the actual net retail price, the same shall be deemed a prima facie proof of willful intent to evade payment of the correct excise tax. Failure on the part of the manufacturer or importer to provide convincing evidence that there is no willful intent to understate the suggested net retail price of the brand shall render the manufacturer or importer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.

**ILLUSTRATION:**

No. 10 – FEL Corp., a cigarette manufacturer, was issued a registration permit for its new product, "Mirage", wherein the tax rate to be imposed is P2.00 per pack based on the Suggested Net Retail Price (SNRP),

excluding VAT and excise, of P 4.35 per pack as declared in its manufacturer's sworn statement. Before the end of three months from the time of its initial removal, the BIR conducted a price survey and found out that the Actual Net Retail Price (ANRP), excluding VAT and excise tax is actually P 5.25 subject to the higher excise tax rate of P 6.35 per pack. The total volume removed by FEL Corp. on the product is 10,000 packs from the time of its removal up to time of its last removal covered by the validation. Compute the total deficiency excise tax and penalties of FEL Corp., if there are any.

I. If FEL Corp. failed to prove willful intent to understate the suggested net retail price

Step 1. Determine whether or not the understatement of the SNRP is equal to or more than 15% of the ANRP

SNRP per Sworn Statement	P 4.35
ANRP per Validation	<u>5.25</u>
Difference	P 0.90
Percentage of understatement [(P0.90 / P4.35) x 100%]	<u>21%</u>

Since the understatement of 21% is more than 15%, FEL Corp is, therefore, liable to the additional penalty for willful understatement of suggested net retail price.

Step 2. Compute the deficiency excise and penalties

Tax rate per ANRP	P 6.35
Add: Differential Tax [P6.35-P2.00]	<u>4.35</u>
Total tax due per pack	P 10.70
Multiplied by volume removed	<u>10,000</u>
Deficiency tax due	P 107,000
Add: Surcharge [50% of P107,000]	<u>53,500</u>
Total basic excise tax deficiency and surcharge	P 160,500
Add: 20% Interest [P160,500 x 20% x 3/12]	<u>8,025</u>
Total deficiency excise tax and penalties	<u>P 168,525</u>

Step 3. Compute the additional penalty to FEL Corp. as a juridical person

Total deficiency excise tax and penalties	<u>P 168,525</u>
Additional penalty as a juridical entity [P168,525 x 3]	<u>P 505,575</u>

Step 4. Compute the total amount due from FEL Corp.

Total deficiency excise tax and penalties	P 168,525
Additional penalty as a juridical entity [P168,000 x 3]	<u>505,575</u>
Total Amount Due	<u>P 674,100</u>

II. If FEL Corp. satisfactorily proved that there is no willful intent to understate the suggested net retail price

Step 1. Compute deficiency tax and interest

Differential Tax [P6.35-P2.00]	P 4.35
Multiply volume of removals	<u>10.000</u>
Basic deficiency excise tax due	P 43,500.00
Add: 20% Interest [P160,500 x 20% x 3/12]	<u>5,437.50</u>
Total deficiency excise tax due	<u>P 48,937.50</u>

Step 2. Compute the additional penalty to FEL Corp. as a juridical person

Total deficiency excise tax due	<u>P 48,937.50</u>
Additional penalty as a juridical entity [P48,937.50 x 3]	<u>P 146,812.50</u>

Step 3. Compute the total amount due from FEL Corp.

Total deficiency excise tax due	P 48,937.50
Additional penalty as a juridical entity	<u>146,812.50</u>
Total Amount Due	<u>P195,750.00</u>

#### **SEC. 10. SUBMISSION OF SWORN STATEMENT OF VOLUME OF SALES.**

– Manufacturers and importers of alcohol or tobacco products shall prepare a monthly sworn statement of the volume and amount of sales per brand, including the name, address and Tax Identification Number (TIN) of customer(s) per brand. In case of absence of the customer's TIN, the words "NO TIN" shall be clearly indicated. The said monthly sworn statement shall be submitted to the LT Programs Divisions (LTPD), BIR National Office, Diliman, Quezon City, for excise taxpayers duly registered as Large Taxpayers, or to the BIR Office where the concerned manufacturer or importer is registered or required to be registered as an excise taxpayer, within twenty five (25) days immediately after the end of each taxable quarter, whether fiscal or calendar. In the case of transshipment, the owner of the goods, the transshipment operator, or their duly authorized representative shall likewise prepare and submit within the same prescribed period, a sworn statement containing information on the inbound and outbound shipments of alcohol or tobacco products such as, but not limited to,

quantity and value for each brand, the names and addresses of the consignors and consignees, the ports of origin and destination, and transshipment ports in the Philippines.

**SEC. 11. TAX-EXEMPT REMOVAL OF PARTIALLY MANUFACTURED LEAF TOBACCO AND LEAF TOBACCO WASTES.** – Stemmed leaf tobacco, leaf tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened, fine cut shorts and refuse, scraps, clippings, cuttings, stems, midribs, and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco, shall be transferred, disposed of, or otherwise sold, without any prepayment of the excise tax: *Provided*, That the same are to be directly exported by the owner thereof or to be used by the transferee or buyer as raw materials in the manufacture of cigars, cigarettes or other excisable tobacco products on which the excise tax will eventually be paid on the finished product. For this purpose, the importation of the said partially manufactured leaf tobacco and leaf tobacco wastes to be used in the manufacture of excisable tobacco products shall, likewise, be exempt from the imposition of excise tax: *Provided*, however, That in case the partially manufactured leaf tobacco or leaf tobacco waste has been sold, transferred or disposed of without the prepayment of excise tax and subsequently used by the transferee or buyer in the manufacture of excisable tobacco products which was eventually exported, the partially manufactured leaf tobacco or leaf tobacco wastes actually used in the manufacture of the exported tobacco products shall be subject to excise tax to be paid by the manufacturer on or before removal from the place of production.

With respect to the removals of tobacco wastes attributable to the tax-exempt partially manufactured leaf tobacco actually used in the manufacture of exported tobacco products, the said tobacco wastes shall be subject to excise tax, regardless of whether or not the same shall be used for industrial or agricultural purposes.

For this purpose, the bond previously posted by the manufacturer to guarantee payment of its excise tax liabilities shall be required to be adjusted to such amount which shall include the total amount of excise tax due on estimated annual volume of partially manufactured leaf tobacco actually used in the production of tobacco products intended for export and the estimated volume of tobacco wastes attributable to the tax-exempt partially manufactured leaf tobacco actually used in the manufacture of tobacco products.

In case of exportation of partially manufactured leaf tobacco and leaf tobacco wastes, delivery of partially manufactured leaf tobacco by a cigar/cigarette manufacturer to another cigar/cigarette manufacturer, and removals of tobacco wastes without residual value arising from the production of excisable tobacco products, a prior permit for such transactions shall be secured from the BIR Office where the owner of the said partially manufactured leaf tobacco and leaf tobacco wastes is registered or required to be registered as an excise taxpayer. In the event that the owner fails to submit the necessary proof of exportation or transfer within thirty (30) days from the date of actual removal from its place of production/warehouse, the products removed shall be subject to the corresponding excise tax including penalties. With respect to the sale or transfer of such products to another manufacturer of excisable tobacco products, the transferee or buyer must be a valid holder of a permit to manufacture cigars, cigarettes or other excisable tobacco products duly issued by the BIR. Accordingly, the sale, transfer or disposition of such products without the prepayment of excise tax thereon to another who is not a holder of a valid permit to

manufacture cigars, cigarettes or other excisable tobacco products, or who is a dealer-trader, whether or not a holder of a valid permit to operate as a dealer or trader of such tobacco products, shall not be allowed. The BIR Office where the said transferee or buyer is registered or required to be registered as an excise taxpayer shall ensure that the products delivered are actually used as raw materials in the production of excisable tobacco products. In case the said tax-exempt products are not used in production but are, instead, sold, transferred or disposed of in any manner other than as raw materials in the production of its own excisable tobacco products without the prescribed permits from the BIR, the excise tax that is otherwise due thereon shall be paid by the said transferee or buyer before removal thereof from its place of production or warehouse, inclusive of all the applicable penalties.

**SEC. 12. IMPORTATION OF AN ALCOHOL OR TOBACCO PRODUCT BY DUTY-FREE SHOPS, OR INTO ECONOMIC ZONES AND FREEPORT ZONES.** – The provision of any special or general law to the contrary notwithstanding, the importation of alcohol or tobacco products, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes thereon. Likewise, the importation thereof directly into the following chartered or legislated freeports shall be subject to such duties and taxes:

- (a) Subic Special Economic and Freeport Zone, R.A. No. 7227;
- (b) Cagayan Special Economic Zone and Freeport, R.A. No. 7922;
- (c) Zamboanga City Special Economic Zone, R.A. No. 7903; and
- (d) Such other freeports as may hereafter be established or created by law.

However, the importation of these excisable products made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP) shall be exempt from all applicable duties but shall be subject to excise and value-added taxes.

For excise tax purposes, the owner or importer, including DFP, of alcohol or tobacco products that are to be imported in commercial quantity and intended to be sold in the domestic market or to be subsequently re-exported, shall be subject to the regular requirements of registration. In addition, an application for Authority to Release Imported Goods (ATRIG), for each and every importation of such products, shall be secured from the BIR Office where he is registered or required to be registered as an excise taxpayer.

All brands of alcohol and tobacco products, whether or not enumerated in the annexes of R.A. No. 8240 and RR Nos. 1-97, 2-97, 22-2003 and 23-2003 actually imported upon the effectivity of the Act by registered-enterprises and/or locators within the freeport zones and by the DFP, shall be treated as new brands subject to the registration, validation and revalidation requirements prescribed by these Regulations. On the other hand, in case of brands imported by the said enterprises/ locators in the freeport zones and by the DFP whose proper tax classifications are determined by the BIR but the same shall be subsequently imported by another importer or locally manufactured, such subsequent importation/manufacture of the same brands shall, likewise, be treated as a new brand; *Provided*, That the tax classification thereof shall not be lower than that determined for the introduction of the same brand within the freeport zones or DFP.

**SEC. 13. SALE/IMPORTATION OF AN ALCOHOL OR TOBACCO PRODUCT TO/BY INTERNATIONAL CARRIERS.** – An alcohol or tobacco product that is removed from the place of production for delivery to, or directly imported by, international airlines or vessels shall be subject to the payment of excise tax. In case there is express provision under the charter of the international airline/vessel, or under any international treaties or agreements which the Philippines is a signatory, that exempts international airlines or vessels from excise tax on alcohol or tobacco products, a claim for tax refund or credit shall be filed by the concerned international airlines or vessels with the appropriate BIR Office.

**SEC. 14. TAX-EXEMPT REMOVAL OF ALCOHOL FOR RECTIFICATION PURPOSES.** – Distilled spirits such as, but not limited to, ethyl alcohol, may be removed from the place of production for purposes of rectification by another establishment without prepayment of the specific tax. For this purpose, the distiller and the rectifier shall file separately an application for a permit to remove tax-exempt alcohol and an application for a permit to purchase tax-exempt alcohol, respectively, with the BIR Offices concerned where the distiller and the rectifier are registered or required to be registered as excise taxpayers. A joint bond executed by the distiller and the rectifier shall be filed together with their respective applications for permit to remove and purchase tax-exempt alcohol, to guarantee the payment of the excise tax due on such removal of conditionally tax-exempt alcohol.

The amount of the joint bond shall be based on the excise tax due on the estimated total annual volume of alcohol to be delivered by the distiller to the rectifier, or the excise tax due on the maximum volume capacity of registered under-bond tanks, whichever is lower. In case the amount of the joint bond is no longer sufficient to cover the total estimated excise tax due on the subsequent conditionally tax-exempt removals until the expiration of the joint bond, the amount of the joint bond shall be revised accordingly. The revised joint bond shall be submitted immediately after determination of the estimated excise tax otherwise due up to the validity period of the submitted joint bond. No subsequent tax-exempt removal shall be allowed unless the revised joint bond shall have been submitted by the manufacturer and the rectifier.

For purposes of this section, the term “rectification” shall refer to the process of refining, purifying or enhancing the quality of ethyl alcohol only by distillation. Other processes intended to improve or enhance the quality of alcohol such as, but not limited to, aging, purification, filtration, carbon-treatments, etc., without distillation undertaken by the rectifier or rectifier-compounder itself, are deemed excluded under the term rectification as defined herein. Hence, deliveries of under-bond alcohol from distilleries to any rectifier or rectifier/compounder employing processes not falling squarely under the definition of rectification shall not be allowed.

Any allowance for losses or actual losses incurred, whether or not due to negligence, in-transit, handling/storage or during the rectification process shall not be allowed or granted. The excise tax due on losses shall be paid by the rectifier on or before the eighth (8<sup>th</sup>) day of the month immediately following the month of operation.

Alcohol removed for purposes of rectification shall be delivered directly from the distillery to the place of production of the rectifier or rectifier-compounder, and shall only be

stored at duly approved storage tanks dedicated for this purpose. Under-bond removals of alcohol from the distillery plant to any storage facility outside the distillery premises, even if intended for subsequent delivery to the place of production of the rectifier, shall not be allowed. Commingling of tax-exempt and tax-paid alcohol on the same storage tank is, likewise, prohibited.

**SEC. 15. IMPOSITION OF SPECIFIC TAX ON ALCOHOL OR TOBACCO PRODUCTS PRODUCED AND CONSUMED WITHIN THE PREMISES OF THE MANUFACTURER.** – Alcohol or tobacco products that are produced or manufactured, whether or not the same have been bottled or packed, as the case may be, and are subsequently consumed within the place of production shall be subject to the payment of excise tax by the manufacturer. The corresponding volume in liters/proof liters or in packs, as the case may be, and the excise tax due thereon shall be declared in the excise tax returns and shall be paid, in the same manner as that prescribed for ordinary removals of excisable alcohol or tobacco products.

The Excise Tax Removal Declaration (ETRD) or any other form that may be prescribed by the BIR shall be issued by the duly authorized representative of the manufacturer duly attested to by the Revenue Officer assigned at the manufacturer's premises. Accordingly, the brand name and volume of alcohol or tobacco products consumed within the production premises shall be separately indicated in the prescribed Official Register Books (ORBs) of the manufacturer.

**SEC. 16. PREPAYMENT OF SPECIFIC TAX ON IMPORTED ALCOHOL OR TOBACCO PRODUCTS.** – The corresponding specific tax shall be assessed and collected by the BIR on any alcohol or tobacco product that is intended to be imported into the Philippines upon which revenue labels and/or strip stamps are requisitioned in advance by the importer from the BIR for subsequent affixture on the primary and secondary containers of the alcohol or tobacco products by the foreign supplier.

No application for the advanced requisition of revenue labels and/or strip stamps shall be processed and issued without the prepayment in full by the importer of the corresponding specific tax on the alcohol and tobacco products intended to be imported.

**SEC. 17. MANNER OF PACKAGING OF CIGARETTES.** – Cigarettes packed by hand shall only be packed in thirties (30s) while cigarettes packed by machine shall only be packed in twenties (20s). However, packaging combinations of hand-packed and machine-packed cigarettes that are wrapped, sealed or bound together by any type of packaging which would result in the containment of twenty (20) cigarette sticks or thirty (30) cigarette sticks, respectively, maybe allowed, subject to the approval of the Commissioner of Internal Revenue.

However, in case cigarettes in such packaging combinations are sold individually at retail, the aggregate retail prices thereof shall be used as basis in determining their proper tax classification.

**SEC. 18. EXPORTATION OF ALCOHOL OR TOBACCO PRODUCTS. –**

Alcohol or tobacco products intended for exports may be removed from the place of production without the prepayment of excise tax, subject to the following terms and conditions:

- (a) A permit shall be secured from the BIR Office where the manufacturer is registered or required to be registered as an excise taxpayer before the product is removed from the place of production;
- (b) A surety bond has been posted to guarantee payment of excise tax which is otherwise due on such removal. For this purpose, the manufacturer-exporter may, at his option, post either a continuing surety bond, or a performance surety bond for each and every export transaction. With respect to the performance surety bond, the amount of the exporter's bond shall be equal to the amount of excise tax otherwise due on the actual volume or value of the alcohol or tobacco products to be exported. On the other hand, with respect to the continuing surety bond, the amount of the exporter's bond shall be equivalent to the amount of excise tax otherwise due on the estimated annual volume or value of the said products to be exported, or to the amount of excise tax due on the unliquidated export shipments of such product, whichever is lower.

A revised surety bond shall be submitted to the appropriate BIR Office in case the exporter's bond is no longer sufficient to cover the subsequent tax-exempt exportations. In case of failure to submit the said revised surety bond, no permit for tax-free importation shall be issued by the concerned BIR Office.

- (c) The products removed from the place of production shall be directly transported, loaded aboard the international shipping vessel or carrier, and shipped directly to the foreign country of destination without returning to the Philippines;
- (d) Proof of exportation such as, but not limited to, the documents enumerated below, shall be submitted within thirty (30) days from the date of actual removal from the place of production. However, the concerned BIR Office may, upon written request by the taxpayer-exporter, grant a period of extension for the submission of such documents for meritorious reasons.
  - i. Export Entry Declaration duly filed with the Bureau of Customs
  - ii. Commercial Invoice
  - iii. Packing list
  - iv. Bill of Lading
  - v. Cargo Manifest, if applicable
  - vi. Inward bank remittance in foreign currency acceptable to the Bangko Sentral ng Pilipinas
  - vii. Any document showing proof that the products exported have actually arrived and unloaded in the foreign port of destination (e.g., certificate of discharge, import entry declaration duly received by the foreign port of entry, etc.)
  - viii. Other necessary documents as may be reasonably required



- (e) The prescribed phrase “FOR EXPORT ONLY” is printed on each label that is attached/affixed/ on the primary container (for alcohol products); on the label which serves as the primary container for cigarettes; on the “ring-label” for cigars; as well as on the secondary containers such as reams, cartons, cases, boxes, etc., in a recognizable and readable manner.

In case of failure to comply with the above terms and conditions, the removal of the product shall be subject to excise tax, inclusive of penalties. Further, no subsequent application for permit for tax-free importation shall be processed and granted unless all the aforementioned requirements have been fully complied with.

**SEC. 19. TRANSSHIPMENT OF ALCOHOL OR TOBACCO PRODUCTS. –**

All alcohol or tobacco products intended for transshipment to a foreign port shall not be subject to the imposition and payment of excise and value-added taxes provided all of the following conditions are satisfied:

- (a) The foreign port of destination shall be clearly indicated in the cargo manifest accompanying the shipment;
- (b) The shipment shall not be unloaded or transported to any other Philippine port of entry prior to the transport thereof to the foreign port of destination as indicated in the cargo manifest;
- (c) The alcohol or tobacco products intended for transshipment shall be transported abroad within fifteen (15) days from the date of arrival thereof in the Philippine territory;
- (d) A guarantee in the amount equivalent to not less than the amount of internal revenues taxes and duties otherwise due from the shipment, shall be filed with the Bureau of Customs (BOC), in a form and validity period acceptable to the Commissioner of Customs; and
- (e) Submission to BOC of any document satisfactorily showing that the transshipped products have actually arrived and have been unloaded in the foreign port of destination (e.g., certificate of discharge, import entry declaration duly received by the foreign port of entry, etc.).

The cancellation/release of such guarantee shall be effected only upon submission of complete documents showing proof of actual shipment of the alcohol or tobacco products to, and receipt thereof by, the intended foreign port of destination. Failure to submit the liquidation documents within the period to be prescribed by the BOC or to transport the shipment to the intended foreign port of destination within the prescribed 15-day period shall cause the automatic forfeiture by the BOC of the guarantee.

**SEC. 20. DENATURATION OF ETHYL ALCOHOL AND SALE OF DENATURED ALCOHOL. –** Domestic alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent [90%] absolute alcohol) shall, when suitably denatured and

rendered unfit for oral intake, be exempt from the payment of excise tax. The following rules and procedures shall be strictly observed in the conduct of denaturation of ethyl alcohol and sale of the denatured alcohol:

**A. Persons Authorized To Purchase Denatured Alcohol.** – The following persons are authorized to purchase tax-free denatured alcohol:

- (1) Registered buyer of denatured alcohol who shall directly purchase the same from distillers for use in the production of its own products;
- (2) Registered dealer of denatured alcohol who is a holder of a valid permit to purchase denatured alcohol and sell the same directly to manufacturers of products; and
- (3) Registered buyer of denatured alcohol who shall directly purchase the same from distillers for its own consumption as fuel or motive power, subject to the payment of appropriate excise tax as petroleum product.

**B. Persons Qualified to Request for the Approval of Denaturing Formula.** - An application for the approval of the formula to be used in the denaturation of ethyl alcohol shall be filed by any manufacturer who intends to use denatured alcohol in its manufacturing operations as raw materials or as fuel or motive power. The application shall be filed with the LTAD II of the BIR National Office, Diliman, Quezon City before any denaturation of ethyl alcohol can be conducted.

For tax-exempt removals of alcohol for purposes of denaturation, only heads and tails alcohol shall be used in accordance with the following formulae:

- (1) For “completely denatured alcohol”, the formula to be used shall be: “To every one hundred (100) parts by volume of ethyl alcohol, two (2) parts by volume of approved methyl alcohol and one half of one (1) part by volume of approved pyridine bases”; and
- (2) For “specially denatured alcohol”, any formula duly approved by the Commissioner of Internal Revenue or his duly authorized representative.

*Provided,* That medicinal preparation, using denatured alcohol as raw material in the manufacture thereof, shall be subject to excise tax as distilled spirits.

The provisions of existing revenue regulations applicable to the administrative schedules, paragraphs and assessment numbers assigned to denaturers, repackers and dealers of denatured alcohol shall still apply. In addition thereto, buyer-manufacturers of denatured alcohol shall be permanently assigned a separate administrative schedule, paragraph and assessment number to be called O-4.

**C. Conduct of Denaturation of Ethyl Alcohol** - The ethyl alcohol shall be denatured strictly in accordance with the denaturing formula duly approved by the Commissioner of Internal Revenue or his duly authorized representative.

The denaturation of ethyl alcohol shall be conducted only in the distillery where the same is produced or manufactured, in the presence of the duly authorized representatives of the BIR. Prior to every denaturation of ethyl alcohol, the distiller-denaturer shall secure from the appropriate BIR Office an authority to denature ethyl alcohol. The application for such authority shall be accompanied by the following documents:

- (1) Duly approved denaturing formula;
- (2) Copy of the permit issued to the buyer of denatured alcohol;
- (3) A duly notarized liquidation statement on the disposition of denatured alcohol previously purchased by the buyer-manufacturer. The liquidation statement shall contain the following information:
  - (a) Date(s) of the conduct of the previous denaturation;
  - (b) Volume of ethyl alcohol transferred to the denaturing tank;
  - (c) Name and quantity of the denaturants used;
  - (d) Beginning and ending stock balances of denatured alcohol;
  - (e) Date of removal and quantity of removed denatured alcohol;
  - (f) Names and addresses of the consignees; and
  - (g) Serial numbers of sales invoices, delivery receipts and Official Delivery Invoices accompanying the removal

Such statement shall also be supported by certified true copies of the sales invoices, delivery receipts, and Official Delivery Invoices;

- (4) Original copy of the purchase invoice or duly certified copy thereof to evidence the purchase of denaturants to be used;
- (5) Samples of denaturant(s); and
- (6) Statement on the quantity of ethyl alcohol to be denatured (in gauge liters and proof liters)

Any request for authority to denature ethyl alcohol shall not be processed and issued without the submission of such liquidation statement on previously denatured alcohol.

In case of transfer of heads and tail alcohol from the storage tank to the denaturing tank without the approved formula for denatured alcohol, the same shall be subject to the payment of the excise tax due thereon, inclusive of all applicable penalties.

**D. Prohibition on Sale to Other Persons, Rectification, or Re-Distillation of Purchased Tax-free Denatured Alcohol.** – No qualified buyer of tax-free denatured alcohol shall be allowed to sell the same to other persons, or whether by himself or through others, rectify, re-distill, or by any other process render the purchased tax-free denatured alcohol fit again for oral intake. In the event that the denatured alcohol has been rendered fit again for oral intake, the said qualified buyer or the person who caused the rectification or re-distillation of the same shall be liable to pay, upon demand, the excise tax due thereon, inclusive of penalties.

**SEC. 21. TOLLING, BOTTLING AND OTHER SUB-CONTRACTING AGREEMENTS.** – In cases of tolling, bottling and other sub-contracting agreements by manufacturer or importer/owner of alcohol or tobacco products with other persons or entities, the following rules and procedures shall be strictly observed:

**A. Registration Requirements**

Any person who is engaged as a sub-contractor to manufacture alcohol or tobacco products or to undertake any part of the manufacturing process such as bottling, packaging, etc. shall first be registered with the BIR as an excise taxpayer.

In case the sub-contractor is a newly registered taxpayer for excise tax purposes, he shall be issued an Assessment Number. In case the sub-contractor is already a registered excise taxpayer, a separate assessment number for this purpose shall no longer be required. The newly registered sub-contractor shall be required to install and maintain ORBs as well as the preparation and submission of the transcript sheets thereof with the BIR. For sub-contractors who are already registered as an excise taxpayer, the installation and maintenance of a separate ORB for the sub-contracted activity shall be required. The deadline of submission of the transcript sheets prescribed herein shall be on or before the eighth (8<sup>th</sup>) day of the month immediately following the month of operation and every 8<sup>th</sup> day of every month thereafter.

**B. Separate Application for Permits**

For each brand of alcohol or tobacco products, the manufacturer or importer/owner and the sub-contractor shall file separate applications for a permit with the BIR Office having jurisdiction over their respective excisable activities prior to the initial production of the brand. The application shall be supported by the following documents:

For the application of the manufacturer or importer/owner of the product:

- (1) Sub-contracting agreement (tolling, bottling, packaging, etc); and
- (2) Permit to engage in business as manufacturer or importer of alcohol or tobacco products. In case the manufacturer is not yet a duly registered taxpayer for excise tax purposes, he shall first undergo the usual registration process.

For the application of the sub-contractor:

- (1) Sub-contracting agreement (tolling, bottling, packaging, etc);
- (2) Permit to engage in business as sub-contractor of alcohol or tobacco products. In case the sub-contractor is not yet a duly registered taxpayer

for excise tax purposes, he shall first undergo the usual registration process;

(3) Plant layout of the sub-contractor clearly indicating the line of production where the brand shall be manufactured, bottled, packaged, etc.; and

(4) Production process flow charts

### **C. Terms and conditions during the sub-contracted activity**

- (1) In case the basic raw materials (ethyl alcohol, essences, leaf tobacco, partially manufactured tobacco, cigarette paper, etc.) shall be supplied by the manufacturer/importer/owner of the brand, the same shall be directly transported to and unloaded in the premises of the sub-contractor from the production premises/warehouse of the manufacturer/importer/owner of the brand or from the customs' custody, in case of importation;
- (2) Every delivery of the said basic raw materials shall be accompanied by an ETRD or any form to be prescribed by the BIR duly issued by the authorized taxpayer's representative and attested to by the revenue officer assigned at the manufacturer's/importer's/brand owner's place of production/warehouse. In case of direct delivery from the customs' custody, the same shall be accompanied by the applicable BIR permits, importation documents and proofs of excise tax payments;
- (3) The dedicated storage areas, storage tank and line of production that are to be used for the purpose shall be clearly identified as depicted in the supporting plant layout. Only the assigned storage area, storage tank and line of production as granted in the permit shall be used during the period of the sub-contracting agreement. In case of any change thereof, a prior permit shall be secured from the concerned BIR Office. However, if such change is temporary or emergency in nature such as due to the occurrence of fortuitous events, force majeure, etc., a written notification therefor shall be filed immediately with the BIR, in lieu of the said permit;
- (4) In cases where the concerned BIR Office cannot provide a revenue officer to monitor the operations of the sub-contractor, an advance production schedule, together with documents that may be prescribed under the permit, shall be submitted to the LT Field Operations Division (LTFOD) prior to every scheduled production run indicating the quantity of the basic raw materials to be used for production, the scheduled date of production/tolling/bottling and the quantity of the finished products that will be produced;
- (5) The finished products or results of the sub-contracted activity shall be immediately removed from the sub-contractor's premises and shall be directly delivered to the intended customers, as the case may be;
- (6) An ETRD or any form to be prescribed by the BIR shall cover all removals from the sub-contractor's production premises/warehouse. For this purpose, a

separate set of ETRDs or any form to be prescribed by the BIR shall be issued exclusively for activity covered by the sub-contracting agreement;

- (7) A liquidation report for each brand shall be submitted to the LTFOD duly attested by the sub-contractor's authorized representative(s) and the revenue officer assigned at the sub-contractor's premises, as the case maybe, not later than three (3) days immediately after each and every sub-contracted production batch. All losses incurred during the sub-contracted activity shall, likewise, be reflected in the liquidation report. Moreover, such losses shall, in no case be allowed to be off-set against the losses incurred in the production of the manufacturer's, importer's or owner's own products; and
- (8) Such other terms and conditions that are deemed necessary in the performance of the sub-contracting activity.

**SEC. 22. LOSSES ON DISTILLED SPIRITS.** – No claim for excise tax refund or credit shall be allowed on distilled spirits that have been lost or destroyed after removal thereof from the place of production or released from the customs' custody. In case of losses incurred on bonded distilled spirits, the corresponding excise tax due on such losses shall be paid to the BIR.

Losses of distilled spirits or rectified alcohol incurred before removal thereof from the distillery premises shall be accounted for and recorded in the ORBs as they occur on a daily basis. For this purpose, a loss of not more than one percent (1%) for distillation and four percent (4%) of excise tax-paid distilled spirits for rectification may be allowed when such loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. However, no deduction for losses shall be allowed on bonded distilled spirits delivered and subsequently stored for rectification purposes as well as losses arising from rectification of such bonded distilled spirits. The total volume of losses incurred during the month less the allowable percentage of loss, if any, shall be computed and the corresponding excise tax due thereon shall be paid to the BIR on or before every eighth (8<sup>th</sup>) day of the month immediately following the month of operations.

**SEC. 23. ADMINISTRATIVE REQUIREMENTS.** – All manufacturers, exporters and importers of alcohol or tobacco products shall comply with the following administrative requirements:

**A. Registration of New Brands and Variants of Existing and New Brands.**

Prior to the initial manufacture or importation of new brands and variants of existing brands and variants of new brands, an application for registration thereof shall be filed with the BIR Office where the manufacturer or importer is registered or required to be registered as an excise taxpayer. The application shall be accompanied by the following:

- (1) Exact replica of the proposed label, as well as the 'artwork' of the secondary containers (e.g. reams, cartons, boxes, etc.), of the brand in three copies. On

the face of the label and all sides of secondary containers of alcohol or tobacco products, the following shall be conspicuously printed in easily recognizable and readable manner:

- (a) Name, address and assessment number of the manufacturer, in case of locally manufactured alcohol or tobacco products. For imported products, the name and address of the foreign manufacturer, as well as the name, address and assessment number of the importer, if applicable, shall be indicated on the label. In case the manufacturer has two or more production plants, the address and the assessment number of the production plant where the brand of the excisable product is to be manufactured shall be printed on the label;
  - (b) The phrase “FOR DOMESTIC SALE ONLY”, in case the brand shall be sold in the domestic market or the phrase “FOR EXPORT ONLY”, in case the brand shall be exported; Provided, That no exportation of alcohol or tobacco products by any person shall be allowed unless the required export markings are prominently printed on the said containers: Provided, further, That the exportation of alcohol and tobacco products bearing the phrase “FOR DOMESTIC SALE ONLY” shall be prohibited in any case;
  - (d) The phrase “DUTY-FREE AND NOT FOR RESALE”, in case of importation by the DFP; and
  - (e) The phrase “FOR EXPORT TO THE PHILIPPINES; TAX AND DUTY PAID” in case the brand shall be imported for domestic market.
- (2) A duly notarized manufacturer’s or importer’s sworn statement for each brand and variant of the brand showing, among others, the following information:
- (a) Name, address, TIN and assessment number of the manufacturer or importer;
  - (b) Complete root name of the brand as well as the complete brand name with modifiers, if any;
  - (c) Complete specifications of the brand detailing the specific measurements, weights, manner of packaging, etc.;
  - (d) Name(s) of the region(s) where the brand is/are to be marketed;
  - (e) Wholesale price per case, gross and net of VAT and excise tax;
  - (f) Suggested retail price, gross and net of VAT and excise tax, per pack or per bottle, as the case may be;
  - (g) Detailed production/importation costs and all other expenses incurred or to be incurred until the product is finally sold (e.g. materials, labor, overhead, selling and administrative expenses) per case;

- (h) Applicable rate of excise tax per unit of measure or value, as the case may be; and
- (i) Corresponding excise and value-added taxes per case.

The manufacturer or importer shall submit thereafter an updated sworn statement of the brand on or before the end of the months of June and December of the year: *Provided*, however, That whenever there is a change in the cost to manufacture, produce and sell the brand or change in the actual selling price of the brand, the updated sworn statement shall be submitted at least five (5) days before the actual removal of the product from the place of production or release from the custom's custody, as the case may be: *Provided*, further, That if the manufacturer or importer sells or allows such goods to be sold at wholesale in another establishment of which he is the owner or the profits thereof of which he has an interest, the selling price in such establishment shall constitute the wholesale price. Should such price be less than the said costs and expenses, a proportionate margin of profit of not less than ten percent (10%) thereof shall be added to constitute the wholesale price. With respect to imported alcohol or tobacco products, the cost of importation shall, in no case, be less than the value indicated in the reference books or any other reference materials used by the BOC in determining the proper valuation of the imported products, or the dutiable value as defined under the Tariff and Customs Code of the Philippines, as amended, whichever, is higher: *Provided*, finally, That in case a new brand, variant of an existing brand or variant of a new brand shall be subsequently marketed in another region/other regions before the proper tax classification is finally determined by the BIR, an updated sworn statement shall be submitted to the appropriate BIR Office before the same shall be removed from the place of production.

The sworn statement prescribed herein shall be subject to verification by the BIR to validate its contents with respect to its accuracy and completeness. In the event that the contents thereof are found to be inaccurate and/or incomplete, the taxpayer shall be required to submit a revised sworn statement, without prejudice to the imposition of corresponding sanctions and penalties.

## **B. Use of Pre-Printed Cases**

Only 'master' cases with information prominently printed in specified areas of the 'master' case prescribed below shall be used for packaging of alcohol and tobacco products:

- (1) On All Sides
  - (a) Complete name of the brand;



- (b) For cigarette products, the number of sticks printed in the following order, (i) per pack, (ii) per carton and (iii) per 'master' case; and
- (c) For alcohol products, the specific contents printed in the following order: (i) number of bottles, (ii) content in gauge liter and proof per bottle and (iii) total content in gauge liter per 'master' case.

(2) On At Least One Side

- (a) If for export market, the phrase "FOR EXPORT ONLY"; or, if for local consumption, the phrase "FOR DOMESTIC SALE ONLY";
- (b) The phrase "Made in the Philippines", if applicable;
- (c) Manufacturer's complete name and address where the alcohol or tobacco products are actually produced; and
- (d) Assessment number of the factory/plant where the alcohol or tobacco products are actually produced.

Except for fermented liquors packed in beer 'shells', all 'master' cases to be used for packaging of alcohol and tobacco products shall be pre-approved by the BIR, subject to the applicable registration requirements prescribed in Section 23.A hereof. The use of 'master' cases that are not pre-approved by the BIR shall be a ground for confiscation or seizure by any authorized BIR personnel.

**C. Notice of Stoppage of Production of a Particular Brand.**

A written notice shall be filed with the BIR Office where the manufacturer is registered or required to be registered as an excise taxpayer with the information that a particular brand(s) shall not be manufactured whether on a permanent or temporary basis. For this purpose, the prescribed notice for temporary stoppages shall be applicable in cases of production shutdown due to scheduled maintenance program, major repairs, labor strikes, orders by other concerned government agencies, and such other similar incidents; or due to occurrence of fortuitous events such as typhoons, floods, fire, etc. The said notice shall be filed at least five (5) days before the actual date of production stoppage of the brand(s). However, in case of occurrence of unforeseen events which will cause the temporary stoppage of production of any brand, and the manufacture cannot comply with the filing of such prior notice, the BIR shall be notified within three (3) days from the actual occurrence of such unforeseen event.

**D. Application for Authority to Release Imported Goods (ATRIG) on Importation of Alcohol or tobacco Products.**

All importers of alcohol or tobacco products shall file an application for Authority to Release Imported Goods (ATRIG) with the BIR Office where they are registered or required to be registered as an excise taxpayer prior to the release

of such products from the customs' custody, in accordance with existing revenue rules, regulations, policies and procedures.

No ATRIG shall be issued in case the imported alcohol or tobacco products are already released from the customs' custody. Likewise, no subsequent application for ATRIG shall be processed unless the importer has submitted proofs of payment of the excise tax due on the imported products covered by previously issued ATRIG.

#### **E. Requisition of Internal Revenue Labels and Strip Stamps on Imported Alcohol or Tobacco Products and Manner of Affixture**

Regular labels (for locally produced ethyl alcohol, imported distilled spirits and wines), auxiliary labels (for imported distilled spirits and wines), and internal revenue strip stamps (for imported chewing tobacco, cigars and cigarettes) shall be requisitioned from the BIR Office where the importer is registered or required to be registered for excise tax purposes. For imported alcohol or tobacco products, the said labels and strip stamps shall be firmly affixed on the said products under the supervision of an authorized representative from the Bureau of Customs in the manner provided below before the products are removed from the customs' warehouse. For locally produced ethyl alcohol, the regular labels shall be firmly affixed in the manner provided below before the said product is removed from the distillery.

##### **1. Regular labels**

Each regular label shall be firmly affixed midway across the edge of the cover flap and the side of the box used as a secondary container hindering the removal of its contents without breaking the said label. In case of tank trucks, iso-tanks or barge, the regular label shall be firmly affixed to the outside or exterior valve/opening of the container/tanker/receptacle in a manner that it cannot be opened without breaking the said label.

##### **2. Auxiliary labels**

Each auxiliary label must be securely affixed to every bottle or immediate container with the use of a good adhesive or paste before placing the bottles, flasks or other immediate containers or distilled spirits or wines in packages, cartons, cases, or other exterior containers. The adhesive or paste must be spread throughout the entire length and breadth of the label and care must be taken to press the whole surface of the label firmly against the surface of the bottle sufficiently long to cause the entire surface of the label to adhere securely to the bottle. The label must pass over the mouth of the bottle, or over cup or cap placed over the opening of the bottle extending an approximately equal distance on two sides of the mouth of the bottle in such a manner that the label will be torn apart or destroyed upon opening the bottle but leaving a portion of the label attached to the bottle.

### 3. Internal Revenue Strip Stamps

Each internal revenue strip stamp shall be affixed across the upper end of the pack and tin can, as the case maybe, overlapping both sides of the immediate container before the same is wrapped in cellophane or transparent wrapper in such a manner as to effectively seal the container and prevent the removal of the cigarettes or cigars without breaking the stamps.

The internal revenue labels and strip stamps may be requisitioned in advance from the concerned BIR Office for purposes of sending them abroad and subsequent affixture thereof while the alcohol or tobacco products are still being packed by the foreign manufacturer/supplier: *Provided*, however, That the corresponding excise tax on the alcohol or tobacco products where the internal revenue labels and strip stamps are to be attached shall be paid to the BIR prior to the issuance of the labels and stamps.

A notarized liquidation statement indicating therein the beginning balance, usage/affixture, breakage/loss and ending balance of the quantity and serial numbers of internal revenue labels and strips stamps previously requisitioned, shall be submitted and attached as one of the required supporting documents in the application for ATRIG covering the imported alcohol or tobacco products upon which the advanced internal revenue labels and strips stamps are intended to be affixed. The importer shall, likewise, surrender all internal revenue labels and strip stamps that were not affixed by reason of breakage during the packaging process. For this purpose, a broken internal revenue label or strip stamp shall be acceptable in the liquidation only if at least three-fourths (3/4) of its original size is being surrendered. In case of failure to surrender any internal revenue label or revenue stamp or the same is surrendered in an unacceptable state (less than  $\frac{3}{4}$  of the original size), the corresponding excise tax otherwise due thereon shall be immediately assessed and collected by the BIR.

### **F. Use of a New BIR Form on All Removals of Alcohol or Tobacco Products**

In lieu of the existing BIR forms, the Excise Tax Removal Declaration (ETRD) (BIR Form No. 207) is hereby prescribed to be used and issued by all registered manufacturers and identified importers/dealers/traders for all removals of alcohol or tobacco products.

The ETRD shall be requisitioned from the LT Field Operations Division (LTFOD) in the BIR National Office, or from the Excise Tax Area Offices at the different BIR Revenue Regions, having respective jurisdiction over the manufacturers/dealers/traders of alcohol or tobacco products. The manner of preparation, issuance and cancellation thereof as well as the applicable reportorial requirements shall be strictly observed in accordance with the existing rules, regulations and procedures issued for this purpose.

### **G. Revised Deadline for the Submission of Transcript Sheets of the Official Register Books for Alcohol or Tobacco Products**

The submission of all transcript sheets of ORBs by all manufacturers, importers and dealers, including sub-contractors, for alcohol or tobacco products to the concerned BIR Office shall be on or before the eighth (8<sup>th</sup>) day of the month immediately following the month of operation and every 8<sup>th</sup> day of every month thereafter in the form prescribed under existing rules and regulations.

### **H. Amount of Manufacturer's and Importer's Bond**

The amount of bond to be posted by a manufacturer or importer of alcohol or tobacco products, for each place of production or warehouse, as the case may be, shall be subject to the following conditions:

- a. Initial Bond – In case of initial bond, the amount shall be equal to One hundred thousand pesos (P100,000): *Provided*, That if after six (6) months of operation, the amount of initial bond is less than the amount of the total excise tax paid during the period, the amount of the bond shall be adjusted to twice the tax actually paid for the period.
- b. Bond for the Succeeding Years of Operation – The bonds for the succeeding years of operation shall be equivalent to the actual total excise tax paid on locally manufactured and/or imported alcohol or tobacco products during the year immediately preceding the year of operation. However, for taxpayers availing of the tax prepayment, advance deposit, or similar schemes, the amount of bond herein prescribed shall be in accordance with the following schedule:

Excise Tax Payment	Minimum Amount of Bond
P 1,000,000 and below	P 100,000
Over P 1,000,000 up to P 5,000,000	P 500,000
Over P 5,000,000 up to P 10,000,000	P 1,000,000
Over P 10,000,000 up to P 25,000,000	P 2,500,000
Over P 25,000,000 up to P 50,000,000	P 5,000,000
Over P 50,000,000 up to P 100,000,000	P 10,000,000
Over P 100,000,000 up to P 500,000,000	P 15,000,000
Over P 500,000,000 up to P 1,000,000,000	P 30,000,000
Over P 1,000,000,000 up to P 10,000,000,000	P 50,000,000
Over P 10,000,000,000 up to P 20,000,000,000	P 75,000,000
Over P 20,000,000,000	P 100,000,000

*Provided*, however, That a higher amount of bond may be required from any manufacturer or importer, for meritorious reasons, subject to the prior written approval by the Commissioner of Internal Revenue.

The Commissioner of Internal Revenue may, when deemed necessary, also require any dealer or trader of alcohol or tobacco products to post a bond in accordance with the above provisions.

The bond prescribed herein shall be conditioned upon the faithful compliance, during the time such business is pursued, with the law and regulations relating to such business and for the satisfaction of all fines and penalties imposed by the NIRC of 1997, as amended. The bond shall be subject to the regular examination by the BIR to be assured of the continued obligations and responsibilities of the taxpayer and the bonding company.

**SEC. 24. INCREMENTAL REVENUE UNDER THE ACT.** – For purposes of allocation of the two and one-half percent (2.5%) of the annual incremental revenue collection under the Act, each in favor of the Philippine Health Insurance Corporation (PHIC) and Department of Health (DOH) for the next five (5) years from the date of effectivity of the Act, the BIR and the BOC shall submit to the Department of Finance (DOF), on or before April 30 of the year immediately following the year of collection, a sworn report of their respective annual incremental revenue collected from locally manufactured and imported alcohol or tobacco products, respectively, that were remitted to the Bureau of Treasury. The said report shall be validated by the Bureau of Treasury before submission thereof by the DOF to the Department of Budget and Management (DBM). The said validated report shall be submitted by the DOF to the DBM, copy furnished the PHIC and the DOH , on or before May 31 of each year.

For alcohol or tobacco products, the incremental revenue shall be computed based on the difference between the tax rates prescribed in R.A. No.8240 and the applicable new tax rates prescribed under the Act applied on the net incremental volume removed from the place of production or released from the customs' custody, as the case may be, during a given calendar year.

#### **ILLUSTRATION:**

No. 11 – Computation of incremental revenue allocation on excise tax collections from cigarettes

A. Details of Removals and Collection on Cigarettes for the Years 2004, 2005 and 2007

Cigarette Brand	2004			2005			2007		
	Volume (packs)	Tax Rate	Tax Collection	Volume (packs)	Tax Rate	Tax Collection	Volume (packs)	Tax Rate	Tax Collection
High- Priced	5,000	P8.96	P44,800	20,000	P10.35	P207,000	18,000	P10.88	P 195,840
Medium-Priced	15,000	P5.60	P84,000	13,000	P6.35	P 82,550	11,000	P6.74	P74,140
Low-Priced	30,000	P1.12	P33,600	20,000	P2.00	P 40,000	19,000	P2.23	P 42,370
<b>Totals</b>	<b>50,000</b>		<b>P162,400</b>	<b>53,000</b>		<b>P329,550</b>	<b>48,000</b>		<b>P312,350</b>

B. Computation of Incremental Revenue for Allocation to Philippine Health Insurance Corp. and Department of Health

Cigarette Brand	Differential Tax Rate			Volume Variance (packs)		
	Previous Year Rates (a)	Tax Rates for the Year of Collection (b)	Differential Tax Rate (c) = (b - a)	Previous Year Volume (d)	Volume on the Year of Collection (e)	Volume Variance (f) = (d - e)
<b>YEAR 2005</b>						
High- Priced	P8.96	P10.35	P 1.39	5,000	20,000	15,000
Medium-Priced	P5.60	P6.35	P 0.75	15,000	13,000	( 2,000)
Low-Priced	P1.12	P2.00	P 0.88	30,000	20,000	(10,000)
<b>Totals</b>				<b>50,000</b>	<b>53,000</b>	<b>3,000</b>
<b>YEAR 2007</b>						
High- Priced	P10.35	P10.88	P .53	20,000	18,000	( 2,000)
Medium-Priced	P6.35	P6.74	P .39	13,000	11,000	( 2,000)
Low-Priced	P2.00	P2.23	P .23	20,000	19,000	( 1,000)
<b>Totals</b>				<b>53,000</b>	<b>48,000</b>	<b>(5,000)</b>

Cigarette Brand	Incremental Revenue from Tax Differential			Incremental Revenue from Volume Variance			Incremental Revenue
	Tax Differential	Last Year Volume	Totals	Volume Variance	Current Tax Rate	Totals	
<b>YEAR 2005</b>							
High- Priced	P 1.39	5,000	P 6,950	15,000	P10.35	P 155,250	P 162,200
Medium-Priced	P 0.75	15,000	11,250	( 2,000)	P6.35	( 12,700)	( 1,450)
Low-Priced	P 0.88	30,000	26,400	(10,000)	P2.00	( 20,000)	6,400
<b>Totals</b>		<b>50,000</b>	<b>P 44,600</b>	<b>3,000</b>		<b>P 122,550</b>	P 167,150
<b>YEAR 2007</b>							
High- Priced	P .53	20,000	P 10,600	( 2,000)	P10.88	(P 21,760)	(P 11,160)
Medium-Priced	P .39	13,000	5,070	( 2,000)	P6.74	( 13,480)	( 8,410)
Low-Priced	P .23	20,000	4,600	( 1,000)	P2.23	( 2,230)	2,370
<b>Totals</b>		<b>53,000</b>	<b>P 20,270</b>	<b>(5,000)</b>		<b>(P 37,470)</b>	(P 17,200)

Cigarette Brand	Tax Collection		Incremental Revenue
	Previous Year	Current Year	
<b>YEAR 2005</b>			
High- Priced	P44,800	P207,000	P 162,200
Medium-Priced	P84,000	P 82,550	(P 1,450)
Low-Priced	P33,600	P 40,000	P 6,400
<b>Totals</b>	<b>P162,400</b>	<b>P329,550</b>	P 167,150
<b>YEAR 2007</b>			
High- Priced	P207,000	P 195,840	(P 11,160)
Medium-Priced	P 82,550	P74,140	(P 8,410)
Low-Priced	P 40,000	P 42,370	P 2,370
<b>Totals</b>	<b>P329,550</b>	<b>P312,350</b>	(P 17,200)

Incremental Revenue Allocation		
	2005	2007
Philippine Health Insurance Corporation		Since no incremental revenue has been realized, there is no basis for the prescribed 2.5% allocation share
P 167,150 x 2.5%	P 4,178.75	
Department of Health		
P 167,150 x 2.5%	P 4,178.75	

On the other hand, for cigars whose manner of taxation was changed from purely specific tax to *ad valorem* tax prescribed by the Act, the incremental revenue shall be computed as follows:

**ILLUSTRATION:**

NO. 12 – Computation of incremental revenue allocation on excise tax collection from cigars

A. Details of Removals and Collection on Cigars for the Years 2004 and 2005

Brand	2004			2005			
	Volume of Removals (pieces)	Specific Tax per piece	Tax Collection	Volume of Removals (pieces)	Net Retail Price	Ad Valorem Tax (per piece)	Tax Collection
Brand 1	400	P 1.12	P 448	250	P 550	P57.50	P 14,375
Brand 2	100	P 1.12	112	50	P 600	P65.00	3,250
Brand 3	150	P 1.12	168	300	P 20	P 2.00	600
Brand 4	500	P 1.12	560	800	P 5	P 1.12 *	896
<b>Totals</b>	<b>1,150</b>		<b>P 1,288</b>	<b>1,400</b>			<b>P 19,121</b>
* Note: Since downward reclassification is prohibited, the applicable tax rate per piece of cigar for Brand No. 4 should be P1.12 instead of P0.50							

B. Computation of Incremental Revenue for Allocation to Philippine Health Insurance Corp. and Department of Health

Brand	Differential Tax Rate			Volume Variance (pieces)		
	Previous Year Rates (a)	Tax Rates for the Year of Collection (b)	Differential Tax Rate (c) = (b - a)	Previous Year Volume (d)	Volume on the Year of Collection (e)	Volume Variance (f) = (d - e)
Brand 1	P 1.12	P57.50	P 56.38	400	250	(150)
Brand 2	P 1.12	P65.00	63.88	100	50	( 50)
Brand 3	P 1.12	P 2.00	.88	150	300	150
Brand 4	P 1.12	P 1.12	-	500	800	300
<b>Totals</b>				<b>1,150</b>	<b>1,400</b>	

Brand	Incremental Revenue from Tax Differential			Incremental Revenue from Volume Variance			Incremental Revenue
	Tax Differential	Last Year Volume	Totals	Volume Variance	Current Tax Rate	Totals	
Brand 1	P 56.38	400	P 22,552	(150)	P57.50	(P 8,625)	P13,927
Brand 2	63.88	100	6,388	( 50)	P65.00	( 3,250)	3,138
Brand 3	.88	150	132	150	P 2.00	300	432
Brand 4	-	500	-	300	P 1.12	336	336
<b>Totals</b>		<b>1,150</b>	<b>P 29,072</b>			<b>P 11,239</b>	<b>P 17,833</b>

Brand	Tax Collection		Incremental Revenue
	Previous Year	Current Year	
Brand 1	P 448	P 14,375	P 13,927
Brand 2	112	3,250	3,138
Brand 3	168	600	432
Brand 4	560	896	336
<b>Totals</b>	<b>P 1,288</b>	<b>P 19,121</b>	<b>P 17,833</b>

Incremental Revenue Allocation For 2005	
Philippine Health Insurance Corporation	
P 17,833 x 2.5%	P 445.83
Department of Health	
P 167,150 x 2.5%	P 4,178.75

**SEC. 25. TRANSITORY PROVISIONS.** – Upon the effectivity of the Act, the following transitory provisions shall be strictly observed by all concerned:

- (1) Manufacturers and importers of distilled spirits and wines shall submit to the BIR Office where it is registered or required to be registered as an excise taxpayer a sworn statement of the volume and amount of sales, including the name, address and TIN of customer(s) per brand of said products, summarized on a monthly basis covering the last quarter of the calendar year 2004 within thirty (30) days from the effectivity of these Regulations.
- (2) All manufacturers-importers and importers of alcohol or tobacco products, including DFP, duty-free shops, locators within the economic and freeport zones, shall prepare and submit the following duly notarized inventory lists as of December 31, 2004:
  - (a) Imported alcohol or tobacco products already covered by final import entry declarations (warehouse entries) whether or not the same are already in their possession; and
  - (b) Imported alcohol or tobacco products that have already arrived at the ports of entry but are not yet covered by final import entry declarations.

Goods shipped by foreign suppliers that are still in-transit as of December 31, 2004, including importations covered by pre-selling arrangements/advance purchase orders that have not yet been shipped out by foreign suppliers, shall not qualify as part of the aforesaid inventory lists for tax-exemption purposes.

The notarized inventory lists shall be submitted to the Chief, LT Assistance Division II (LTAD II) of the BIR, National Office, Diliman, Quezon City, not later than fifteen (15) days immediately after the date of effectivity of these Regulations. The same shall contain the complete name and description of each brand, content per packaging/container, proof per bottle/container (for distilled spirits), gross and net retail prices per bottle/pack/piece, the corresponding quantity for each brand, as well as the reference number of the covering final import entry declaration. The said inventory list shall be subject to verification by the BIR for purposes of determining the accuracy thereof.

Imported alcohol or tobacco products that have already arrived at the ports of entry and already covered by import entry declarations and to which the corresponding VAT and excise tax have already been paid to the BOC, although still in the customs' premises at the date of the effectivity of the Act, shall still be covered by the provisions of R.A. No. 8240. However, if any of the aforementioned conditions are not satisfied, such products shall be deemed imported after the effectivity of the Act and shall be subject to the imposition of the new excise tax rates prescribed under the Act.



In case of failure by the DFP and the locators within the freeport zones to submit the prescribed inventory list or has submitted an erroneous inventory list, the unreported inventory on-hand as of December 31, 2004 shall be deemed to be importation made on or after the effectivity of the Act.

All inventories of imported alcohol or tobacco products, except fermented liquors, in the possession of DFP, duty-free shops and locators within the economic and freeport zones shall comply with the labeling requirements (affixture of regular and labels on alcohol products and strip stamps on tobacco products) as well as with the printed information on the labels (**“For Export to the Philippines; Tax and Duty Free”** and **“Not For Resale Outside of Free Port Zone”**), if applicable, as prescribed under the existing rules and regulations. In the absence thereof, the corresponding VAT and excise tax shall be immediately paid; otherwise, the same shall be subject to forfeiture and confiscation by the BIR.

The said products forming part of the inventory that fall under the provisions of R.A. No. 8240 shall only be sold to duly accredited locators in the freeport zones for their consumption within the said zone. In the event that these goods will be sold to non-registered locators, the purchaser/consignee thereof, shall be deemed the importer of these articles and, therefore, liable to the payment of the applicable excise and value-added taxes imposed pursuant to the Act.

- (3) Upon the date of the effectivity of these Regulations, all under-bond ethyl alcohol in the possession of rectifiers and rectifiers-compounders that do not fall squarely under the definition of rectification prescribed by these Regulations shall be immediately subject to the payment of excise tax imposed under the Act. For this purpose, all rectifiers and rectifiers-compounders shall submit to the Chief, LTAD II or EXTA, as the case may be, a duly notarized inventory list of ethyl alcohol, whether tax-paid or under-bond, that are on-hand as of the date of effectivity of these Regulations. The said inventory list shall be submitted within fifteen (15) days immediately after the date of effectivity of these Regulations. The excise tax due on the under-bond stocks shall be paid within five (5) days after actual date of receipt of notice of disqualification as a rectifier or rectifier-compounder from the BIR.
- (4) Pursuant to the provisions of these Regulations, all under-bond ethyl alcohol owned by distillers that are stored outside their distillery plants shall be immediately subject to the payment of excise tax imposed under the Act. For this purpose, all distillers maintaining extension warehouses/storage facilities outside the distillery plants shall submit to the Chief, LTAD II or EXTA, as the case may be, a duly notarized inventory list of under-bond ethyl alcohol stored therein as of the date of effectivity of these Regulations. The said inventory list shall be submitted within fifteen (15) days immediately after the date of effectivity of these Regulations. The excise tax due on the under-bond stocks shall be paid within five (5) days after actual date of receipt of notice of revocation of the permit to maintain under-bond warehouse/storage facilities from the BIR.

- (5) The ETRD prescribed by these Regulations shall be used and issued only after all the unused ODIs and GUIAs are completely exhausted. For this purpose, all concerned taxpayers shall submit an inventory list of all unused ODIs and GUIAs in their possession as of the date of effectivity of these Regulations. The inventory list shall be submitted to the LTFOD not later than fifteen (15) days from the date of effectivity of these Regulations. In case of failure to submit the inventory list, or submission of incomplete inventory list, the unreported inventory of unused old form shall be deemed cancelled. All transactions covered by “deemed cancelled” old forms shall be subject to all applicable penalties under existing revenue rules and regulations.
- (6) With respect to a new brand or a variant of a new brand of an alcohol or tobacco product that was introduced between January 1, 2004 and December 31, 2004, as well as a new brand, variant of a new brand or variant of an existing brand that was introduced from January 1, 2005 up to the effectivity of these Regulations, the manufacturer/importer thereof shall submit to the Chief, LTAD II, not later than ten (10) days from the effectivity of these Regulations, a notarized statement stating whether its brand of alcohol or tobacco product was nationally or regionally marketed. The said notarized statement shall also indicate the specific name(s) of the region(s) where the brand was introduced or marketed. A copy of the sworn statement duly received by the BIR for such brand shall be attached to the said notarized statement.

For a new brand or a variant of a new brand that was introduced between January 1, 2004 and December 31, 2004 which was not yet subjected to the initial validation, its tax classification according to its suggested net retail price as reflected in the manufacturer’s/importer’s sworn statement shall be deemed its proper tax classification pursuant to these Regulations. However, the running of the 18-month period for the revalidation of such brand shall commence from the date of actual receipt of the aforesaid notarized statement or from the time the herein prescribed minimum volume requirements for commercial production and marketing of the brand has been continuously satisfied, whichever comes later.

However, for a new brand, a variant of a new brand or a variant of an existing brand that was introduced from January 1, 2005 up to the effectivity of these Regulations, its tax classification according to its suggested net retail price as reflected in the manufacturer’s/importer’s sworn statement shall still be subject to initial validation notwithstanding the lapse of 3 months. For this purpose, the 3-month period subject to the initial validation shall be reckoned from the date of actual receipt by the BIR of the said notarized statement, subject to the minimum requirements for commercial production and marketing as prescribed in these Regulations.

- (7) A notarized list of inventory-on hand as of the date of effectivity of these Regulations of all unused labels previously approved by the BIR without the marking “FOR DOMESTIC SALE ONLY”, for products intended for domestic market, as well as all the printed reams, cartons, boxes or ‘master’ cases without the necessary information prescribed

under the provisions of Section No. 23.A(1) and 23.B hereof, indicating the complete name of brands of alcohol or tobacco products to be packed and the quantity thereof (in pieces), shall be submitted to the Chief, LTFOD not later than ten (10) days immediately after the date of effectivity of these Regulations. Failure to submit the said list shall be tantamount to the inexistence of such inventories as of the effectivity of these Regulations. Accordingly, the use of primary and secondary containers not containing the information prescribed herein without the submission of the said inventory list or the use of such containers for brands not included in the inventory list or in excess of the quantity declared in the inventory list shall be subjected to confiscation and seizure by any authorized BIR personnel.

**SEC. 26. PENALTIES.** – Violations of these Regulations shall be subject to the corresponding penalties under Title X of the NIRC of 1997, as amended.

Further, the following penalty provisions are hereby prescribed pursuant to the provisions of the Act, as follows:

- (a) Any manufacturer or importer who knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall, upon discovery, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as a manufacturer or importer of alcohol or tobacco products;
- (b) Any corporation, association or partnership liable for any of the acts or omissions in violation of the Act and implemented by these Regulations shall be fined treble the aggregate amount of deficiency taxes, surcharges and interest which may be assessed pursuant to the provisions of the Act;
- (c) Any person liable for any of the acts or omission prohibited under the Act and implemented by these Regulations shall be criminally liable and penalized under Section 254 of the NIRC of 1997, as amended; and
- (d) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation.

**SEC. 27. SEPARABILITY CLAUSE** - If any of the provisions 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. 28. REPEALING CLAUSE.** – All regulations, rulings, orders, or portions thereof which are inconsistent with the provisions of these Regulations are hereby revoked, repealed or amended, accordingly.

**SEC. 29. EFFECTIVITY.** – These Regulations shall take effect after fifteen (15) days following publication in leading newspapers of general circulation.

(Original Signed)  
**MARGARITO B. TEVES**  
Secretary of Finance

Recommending Approval:

(Original Signed)  
**JOSE MARIO C. BUÑAG**  
Commissioner of Internal Revenue