

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

March 31, 2003

REVENUE REGULATIONS NO. 16-2003

SUBJECT : Implementing the Provisions of Sections 6, 244 and 245 in Relation to Sections 24, 25, 27, 28, 51, 52, 106, 108, 114, 116, and 128 of the National Internal Revenue Code of 1997 (Code), Imposing Advance Payment of Value-added Tax or Percentage Tax and of Income Tax on “Privilege-Store” and Prescribing and Reiterating the Obligations of Organizer or Exhibitor of Space for the Operation of “Privilege-Store,” as Well as of the “Privilege-Store” Operators.

TO : All Internal Revenue Officers & Others Concerned

POLICY STATEMENTS

The past years saw the formidable growth of “*privilege-stores*” popularly known as “*tiangges*.” This type of temporary stalls or outlets where goods/services are sold only for a brief duration of time is now a familiar sight in various areas of the country, especially in places like the shopping malls, open spaces or lobbies of office buildings, hospitals, hotels, parks, churches, subdivisions or even along the streets of the metropolis and in other public areas.

What used to be a seasonal affair occurring only during the Christmas period has now evolved into a recurring event for the most part of the year. Thus, from this emerged a new breed of profitable business enterprises that have escaped taxation precisely because, through such type of stall or outlet, they have invariably managed to conduct their business operations in such a nomadic fashion thereby making it difficult for the Bureau to track them down and/or compel them to pay the rightful taxes due to the Government.

The growing popularity of using this medium to sell goods/services necessitates the Bureau to employ a scheme to plug revenue leakages and to tap additional revenue source which is *through the advance payment of probable taxes due*. Prescribing such mode of tax collection is very well within the realm of the authority of the Department of Finance and the Bureau of Internal Revenue because Section 245 (j) of the Code allows the promulgation of Revenue Regulations prescribing the “*manner in which internal revenue taxes such as income tax, including withholding tax, estate and donor’s tax, value added tax, other percentage*

taxes, excise taxes and documentary stamp taxes shall be paid through the collection officers of the Bureau of Internal Revenue or through duly authorized agent banks which are deputized to receive payment of such taxes and the returns, papers and statements that may be filed by taxpayers in connection with the payment of the tax: xxx xxx xxx.”

This concept of tax collection is not new to the Bureau, for in the past, it had already employed such method of collection when it promulgated Revenue Regulations No. 7-89, which was later amended and superseded by Revenue Regulations No. 29-2002, requiring the advance payment of value-added tax (VAT) on the sale of refined sugar.

These Regulations, therefore, shall govern the advance payment of value-added tax or percentage tax and of income tax by those who sell goods and/or services through the use of “*privilege –store.*”

SECTION 1. SCOPE. - Pursuant to the provisions of Sections 244, 245 and 6 in relation to Sections 24, 25, 27, 28, 51, 52, 106, 108, 114, 116, and 128 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to prescribe the rules on the advance payment of value-added tax or percentage tax and of income tax by those who employ the use of “*privilege- store*” as a place to sell their goods/services.

SEC. 2. DEFINITION OF TERMS. - For purposes of these Regulations:

- (a) The term “*Privilege-Store*” refers to a stall or outlet which is not permanently fixed to the ground and is normally set up in places like the shopping malls, hospitals, office buildings, hotels, villages or subdivisions, churches, parks, streets and other public places, which puts on sale a variety of goods/services within brief durations of time.
- (b) The term “*Exhibitor*” or “*Organizer*” refers to the primary lessee of the entire space where the operations of privilege-stores are held by virtue of a lease contract executed between the owner of the leased property and the organizer who subsequently sub-leases the same to the privilege-store operators during the entire duration of the lease contract. In case the owner of the real property is the one directly leasing to the privilege-store operator defined in Item (c) below, such owner shall be constituted as the exhibitor or organizer for this purpose.
- (c) The term “*Privilege-Store Operator*” refers to the person or entity sub-leasing from the “*exhibitor*” or “*organizer*” a space upon which privilege-stores are erected for the purpose of selling goods or services during the entire duration of the lease contract.

SEC. 3. OBLIGATIONS OF THE EXHIBITOR/ORGANIZER AND PRIVILEGE-STORE OPERATORS TO THE BUREAU OF INTERNAL REVENUE. -

(A) Obligations of the Exhibitor or Organizer. –

(1) Obligation to Post in a Conspicuous Place the Certificate of Registration of the Organizer.- Every organizer or exhibitor is obliged to post the exhibitor's Certificate of Registration issued by the Bureau of Internal Revenue in a conspicuous place in the area or space devoted to the establishment of privilege-stores.

(2) Obligation to Deduct and Withhold the Expanded Withholding Tax on Lease Payments to the Lessor of Real Property. – Every exhibitor or organizer, upon accrual or payment of lease rentals to the owner of real property, shall withhold and deduct from such accrued or paid rentals, withholding tax on rentals at the rate prescribed in Revenue Regulations No. 2-98, as amended (five percent (5%) of the gross amounts, unless later amended), which shall be remitted/paid on or before the 10th day of the following month using the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601E] except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year pursuant to Revenue Regulations No. 2-98, as amended. For those who would be filing using the Electronic Filing and Payment System (EFPS), the regulations pertaining to EFPS filers shall apply. Provided, however, that if the exhibitor or organizer happens to be the owner of the leased property, this provision shall not apply.

(3) Obligation to Inform Revenue District Office (RDO). – The exhibitor/organizer, upon determination of the number and the respective identities of those who have sub-leased the spaces for the operation of privilege-stores shall have the duty, prior to the opening thereof, to provide the Revenue District Office (RDO) having jurisdiction over the place where the operation of the privilege-store is held with the list of the names, the individual Taxpayer Identification Number(TIN) and Certificate of Registration (COR) of persons/entities participating in the event and the specific dates and duration when such operations shall be conducted.

(4) Obligation to Ensure Registration with the Bureau of Internal Revenue (BIR) and the Remittance of Actual Withholding Tax Liabilities and of Advance Income Tax and Advance Value-added Tax or Percentage Tax by the Privilege-store Operator – Every organizer or exhibitor is obliged to demand from the privilege-store operator presentation of proof of BIR registration and of payment of actual withholding tax due on income payment or expenditure item paid or accrued, or of advance income tax and of advance value-added tax or percentage tax due for payment prior to the actual operation of the privilege-store or prior to the start of the month to which the advance tax payment shall be applied.

(5) Obligation to Report to the Bureau of Internal Revenue non-compliance by the privilege-store operators of their obligations and responsibilities. – Every exhibitor or organizer is obliged to monitor the compliance by privilege-store operators with their responsibilities and obligations as prescribed in these Revenue Regulations. The authority of the organizer to monitor privilege-stores' compliance with these Regulations, with the corresponding power to revoke the lease agreement, shall form part of the Contract of Lease executed between the parties herein-mentioned. Violations of and sanctions imposed on privilege-store operators shall be reported to the Bureau of Internal Revenue.

(B) Obligations of Privilege-Store Operators . –

(1) Obligation to Deduct and Withhold the Expanded Withholding Tax on Rental Payments to Exhibitor/Organizer For Sub-Leased Spaces. – Every privilege-store operator shall, upon accrual or payment of rentals of sub-leased spaces to the exhibitor/organizer, withhold and deduct from such accrued or paid rentals withholding tax on rentals at the rate prescribed in Revenue Regulations No. 2-98, as amended (five percent (5%) of the gross amounts, unless later amended), which shall be remitted/paid on or before the 10th day of the following month using the Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601E], except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year pursuant to Revenue Regulations No. 2-98, as amended. For those who would be filing using the Electronic Filing and Payment System (EFPS), the regulations pertaining to EFPS filers shall apply.

(2) Obligation to Pay Advance Income Tax and Advance Value-added Tax or Advance Percentage Tax. - Persons who sell their goods/services through privilege-stores are required to pay business tax (value-added tax or percentage tax) and income tax in advance as prescribed in Section 4 hereof, which shall be paid to the Bureau of Internal Revenue, through the Authorized Agent Bank (AAB) or Revenue Collection Officer (RCO), in the absence of an AAB, of the Revenue District Office (RDO) having jurisdiction over the place where such privilege-stores have been set up, regardless of whether or not these persons have been duly registered with the Bureau of Internal Revenue. It is mandated, nonetheless, that these stores be required to register with the RDO where their principal place of business is located (i.e., the business address indicated in the Articles of Incorporation, in case of corporate taxpayers, or where the books of accounts are kept, in case of individual taxpayers).

Such advance payments must be paid to the concerned AAB or RCO, in the absence of an AAB, on a monthly basis using Payment Form No. 0605 and must be made within the week prior to the month to which the same shall be applied. Provided, however, that if the duration of the privilege store is for less than one month, then the advance payment shall cover only said lesser period.

SEC. 4. IMPOSITION OF ADVANCE PAYMENT OF TAXES . - Unless the exhibit covers a lesser period, the following fixed-amounts of business tax (value-

added tax or percentage tax) and income tax shall be considered as creditable taxes for the current period and shall be imposed and collected on a monthly basis from the persons described in Section 3 above:

- a. Business Tax [Value-added Tax (VAT) or Percentage Tax, as the case may be] of ONE HUNDRED FIFTY PESOS (P150) per day or FOUR THOUSAND FIVE HUNDRED PESOS (P4,500) per month during the entire duration that such privilege-store is allowed by the concerned Local Government Unit to be set up in the place for which the same has been temporarily established.
- b. Income Tax of FIFTY PESOS (P50) per day or ONE THOUSAND FIVE HUNDRED PESOS (P1,500) per month during the entire duration that such privilege-store is allowed by the concerned Local Government Unit to be set up in the place for which the same has been temporarily established.

The above-prescribed daily rates, notwithstanding, the Commissioner may change the rates of the aforementioned creditable taxes paid in advance depending upon the business situation of the taxpayer, or upon request of the taxpayer duly supported with reasons or justifications for the request. Such change in the rates shall be embodied in a notice sent to the taxpayer for this purpose.

SEC. 5. CREDIT FOR ADVANCE PAYMENT. - As these are advance payments, the same shall be credited against the actual business tax (value-added tax or percentage tax, as the case may be) and income tax due from such persons for the taxable period for which such advance payments were remitted to the Bureau of Internal Revenue.

(a) Credit of Advance Business Tax. - If the seller of goods/services is a non-VAT taxpayer whose gross sales/receipts do not exceed P550,000 in any 12-month period and therefore, liable to the 3% percentage tax imposed under Section 116 of the Tax Code, such advance business tax paid pursuant to Section 4(a) above shall be credited against the percentage tax due from such seller for the month for which such advance payment was collected.

If the seller of goods/service, on the other hand, is a VAT taxpayer, in addition to the input tax credits allowed by the Code, the amount of advance business tax paid pursuant to Section 4(a) above shall be allowed as credit against the output tax on the accumulated gross sales/receipts realized by the seller for the month for which such advance payment was made. For this purpose, the accumulated gross sales/receipts reportable by the seller in the monthly VAT declaration or Quarterly VAT Return shall not only include those realized from the use of "privilege-store," but shall likewise include those realized from its permanent place of establishment, branches and other places where marketing and/or sales of goods/services are conducted.

(b) Credit of Advance Income Tax.- The amount of advance income tax paid pursuant to Section 4 (b) above shall, on the other hand, be credited against the income tax due from the seller when he files his quarterly, as well as his annual, income tax return for the year.

SEC. 6. PROOF OF ADVANCE PAYMENT. - The advance payment of business tax and of income tax shall be evidenced by the duly validated copy of BIR Form No. 0605 and the Official Receipt/Deposit Slip issued by the AAB or the RCO, in the absence of an AAB, of the RDO having jurisdiction over the place where the privilege-store operates.

For purposes of claiming the advance payments as credits against the actual taxes due, the applicable tax returns to be filed must be accompanied by a duly filed Payment Form (BIR Form No. 0605) and by Official Receipts/Deposit Slips issued by the Accredited Agent Banks (AABs) or RCO, if applicable, which shall constitute as the proof for the advance payment of taxes. Without such proof attached to the tax returns, any claim on account thereof shall be disallowed and the assessment of deficiency taxes shall correspondingly be made.

SEC. 7. IMPLEMENTATION GUIDELINES. – For purposes of these Regulations, the following guidelines shall be observed :

(a) All RDOs of the Bureau shall be primarily responsible in monitoring compliance by the organizer/exhibitor of his obligations imposed herein and the activities of any privilege-store operating within their respective jurisdictions, as well as in validating the list furnished by the exhibitor/organizer with respect to such information regarding the identity of the participants, the number of participants, and the duration of the exhibit.

(b) Based on the list provided by the exhibitor/organizer, the RDO shall recommend the issuance by the Regional Director of Mission Order/s directing the concerned RDO to deploy Revenue Collection Officers (RCOs) or Revenue Officers (ROs) who shall be in-charge in physically checking compliance by the organizer/exhibitor of his obligations imposed herein, and of monitoring and checking whether advance payments of business and income taxes and actual payment of the withholding tax on rentals and other income payments subject to withholding have been duly made by the operators of the privilege-stores. Verification should likewise be done on the compliance of the taxpayer's obligation of filing the regular returns, i.e., income tax returns, withholding tax returns, VAT returns or percentage tax returns.

(c) Unless the duration of the exhibit is for a period lesser than a month's time, advance payment of business and income taxes shall be on a monthly basis which shall be paid a week before the start of every month and remitted to the AAB or RCO, in the absence of an AAB, using BIR Form No. 0605 (Payment Form). In all cases, advance payment shall always be made within the week prior to the actual start of the exhibit. The advance payment shall be equal to the number of days of

operation in a month's time for which the advance payment shall be applied for or credited against.

(d) Receipt of payment for advance taxes prescribed herein shall be evidenced by duly validated payment forms (BIR Form No. 0605) and Official Receipts/Deposit Slips issued by the AAB or RCO, in the absence of an AAB, of the RDO having jurisdiction over the place where the operations of privilege-stores are held.

(e) The RCOs/ROs assigned shall prepare weekly reports indicating therein the names of the privilege-store organizer and operators who have not complied with the provisions of these Regulations. Moreover, a report on the advance payment for every tax type per taxpayer, as well as on the regular tax returns filed, shall likewise be submitted to the RDO, copy-furnished the Regional Director.

(f) The RCOs/ROs shall likewise be in-charge of establishing a profile of those sellers of goods/services who have not yet been registered with the Bureau of Internal Revenue. Their registrable business addresses must be obtained so that the identity of these taxpayers may be endorsed to the appropriate RDO which shall take the appropriate action to ensure registration and the collection of the appropriate fees and taxes due from them.

SEC. 8. PENALTY CLAUSE. – Any violation of the provisions of these Regulations shall be subject to the penalties provided for in Sections 254, 275 and other pertinent provisions of the Code.

SEC. 9. REPEALING CLAUSE. - The provisions of revenue issuances inconsistent herewith are hereby repealed, modified or amended accordingly.

SEC. 10. EFFECTIVITY CLAUSE. - The provisions of these Regulations shall take effect immediately after fifteen (15) days following publication in a newspaper of general circulation in the Philippines.

(Original Signed)
JOSE ISIDRO N. CAMACHO
Secretary of Finance

Recommending Approval:

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue