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BUYING AND SELLING OF TV AIR TIME IS VAT-TAXABLE.

BIR REVENUE MEMORANDUM CIRCULAR NO. 79-91, July 19, 1991

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Rulings have been issued by this Office (i.e., BIR Ruling Nos. 188-83 dated November 4, 1983; 397-87 dated December 15, 1987; undated letter ruling dated February 11, 1988) holding that a person engaged in the buying and selling of TV airtime is not subject to the contractor's tax as well as the broker's tax because he/it does not sell services or labor; nor does he/it brings about sales or purchases of merchandise for other persons; and that he/it is not subject to the value-added tax because such business activity is not a sale of service, labor or goods, but a sale of intangible property rights.

However, after a restudy of the above rulings, we find the same devoid of legal basis.

Under Article 416(3) of the Civil Code, forces of nature which are brought under control by science is a personal property. TV airtime is such a property. It is personal and intangible property, yet it can be sold. As distinguished from mere airtime which cannot be sold because it is res nullius, TV airtime can be sold and is being sold for a consideration that is determinable. That makes TV airtime personal, appropriable and transferable property except that it is not movable, like any ordinary taxable goods.

Article 1458 of the Civil Code defines contract of sale as one where one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent. While airtime itself is an intangible property, the sale of a specific TV airtime contemplates the use by the contractee-buyer of television broadcast facilities of the station owner, and/or availment of the services of the latter. Therefore, while no actual transfer of ownership takes place in the "buying and selling of TV airtime", such "sale" could in fact be referred to as a contract for the use of TV broadcast facilities within a space of time wherein the consideration is measured by the length of time allowed to the buyer. It is akin to the use of parking space facilities the consideration of which is subject to VAT. Such being the case, the conclusion is justified that the use of TV airtime should likewise be considered sale of service; hence, subject to value-added tax under Section 102(a) of the Tax Code. In other words, when a person buys TV airtime to telecast programs and shows through the use of the facilities of the station owner, sells time spots to advertisers and flash their advertisements within a specific time in between programs or shows, this constitutes rendering of services for a consideration.

In view thereof, this Office issued BIR Ruling Nos. 134-91, 135-91, 136-91, all dated July 16, 1991 revoking the aforesaid rulings and holding that the buying and selling of TV airtime constitutes the rendition of service to others for a consideration subject to the 10% value-added tax imposed under Section 102(a) of the Tax Code. Accordingly, persons engaged in the buying and selling of TV airtime shall be liable to VAT effective July 17, 1991.

This Circular should be given the widest publicity as possible.

Adopted: 19 July 1991

(Sgd.) JOSE U. ONG

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