TAXABILITY OF HEALTH MAINTENANCE ORGANIZATIONS (HMOS) FOR VAT PURPOSES

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For the information and guidance of all concerned, quoted hereunder are pertinent portions of C.T.A. Case No. 616, entitled, “Philippine Health Care Providers, Inc., petitioner, vs. The Commissioner of Internal Revenue, respondent”, dated April 05, 2002, which reiterated the view of the VAT Review Committee under VAT Ruling No. 18-98, dated June 23, 1998, that Health Maintenance Organizations (HMOs) are considered service contractors and, therefore, subject to VAT at the rate of ten percent (10%), to wit:

> "xxx xxx xxx"
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> "As can be gleaned from the records of the case, petitioner was actually organized to establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of diseased and disabled persons who are enrolled in the health care plan . . . (Exhibit 1-a). Under the prepaid group practice health care delivery system adopted by petitioner, individuals enrolled in its health care program are entitled to medical services to be conducted by duly licensed physicians, specialists and other professional technical staff in a hospital or clinic owned, operated and accredited by petitioner. To be entitled to receive such medical services, an individual must enroll in petitioner’s health care program and pay an annual fee. Enrollment thereon is on a year-to-year basis and enrollees are issued identification cards (Exhibit P). Thus, it can be inferred from the foregoing that petitioner actually provides and arranges for the provision of pre-need health care services to its members for a fixed prepaid fee for a specified period of time. Petitioner contracts the services of physicians, medical and dental practitioners, clinics and hospitals to perform such services to its enrolled members. Petitioner also enters into contract with clinics, hospitals, medical professionals and then negotiates with them regarding payment schemes, financing and other procedures in the delivery of health services. In choosing which to accredit, they actually set the parameters, rules and guidelines for the accreditation of the participating clinics and hospitals.
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> "Thus, it is evident that petitioner is not actually rendering medical service but merely acting as a conduit between the members and their accredited recognized hospitals and clinics. Apparently, they are subject to VAT under Section 102 [now Section 108] of the Tax Code as service contractors, thus:
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> 'Section 102 [now 108] — Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied, assessed and collected, a value -added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
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> 'The phrase ‘sale or exchange of service’ means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; . . . . (underlining supplied)

"Suffice it to say, that what is really taxed in this case is the service rendered by petitioner in providing and arranging for the provisions of health case services to its members in exchange for a pre-negotiated, pre-paid membership fees. The records do not show any proof that petitioner actually owned a hospital or clinic nor is it directly engaged in the rendering of medical services.

"VAT Ruling No. 231-88 dated June 9, 1988 is not in accord with the facts and the applicable law thus we cannot

adopt the same in arriving at a just conclusion of this case. Thus, petitioner can be validly assessed of VAT deficiency , considering the erroneous interpretation by the BIR of the facts surrounding the case at bar. It bears stressing that the Government can never be in estoppel, particularly in matters involving taxes. It is a well-known rule that erroneous application and enforcement of the law by public officers do not preclude subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents (Philippine Basketball Association, G.R. 119122, 337 SCRA 358, August 8, 2000). Thus, in the case of Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999:

"xxx xxx xxx"

"The next issue is concerned with the question of whether or not membership fees in connection with prepaid group practice health care program are subject to VAT. We answer in the affirmative. The revenues of health care providers are actually derived from the application and membership fees being paid by their members. Thus, the basis for computing the VAT in case of sellers of services shall be the gross receipts, which in this case shall be the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners."

"xxx xxx xxx"

"WHEREFORE, in view of the foregoing, the instant Petition for Review is PARTIALLY GRANTED. Petitioner is hereby ORDERED to PAY the deficiency VAT amounting to P22,054,831.75 inclusive of 25% surcharge plus 20% interest from January 20, 1997 until fully paid for the 1996 VAT deficiency and P31,094,163.87 inclusive of 25% surcharge plus 20% interest from January 20, 1998 until fully paid for the 1997 VAT deficiency. Accordingly, VAT Ruling No. 361-88 is declared void and without force and effect xxx xxx xxx"

SO ORDERED."

Thus, without doubt, HMOs are subject to the value added tax on their gross receipts.

All internal revenue officers and employees are hereby enjoined to give this Circular as wide a publicity as possible.

Adopted: 13 Dec. 2002

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

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