

PRESCRIBING THE GUIDELINES GOVERNING THE POWERS OF CITIES AND MUNICIPALITIES TO IMPOSE BUSINESS TAX ON BOI-REGISTERED ENTERPRISES PURSUANT TO SEC. 133(G) OF REPUBLIC ACT NO. 716...

DOF LOCAL FINANCE CIRCULAR NO. 5-93, October 21, 1993

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Pursuant to Section 133(g) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (LGC), the exercise of the taxing powers of the Local Government Units (LGUs) shall not extend to the levy of local business tax (LBT) on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, from the date of registration;

Accordingly, the following guidelines are hereby issued in accordance with Art. 287 of the IRR, to prescribe the limitations, manner, and procedures for the imposition of local business taxes on BOI-registered enterprises and to supplement Article 221(g) of the IRR with a view of further clarifying the implementation of said provision consistent with Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, Republic Act No. 7042, otherwise known as the Foreign Investment Act of 1991 and other related laws and national policies;

SECTION 1. Coverage. - This Circular prescribes the guidelines governing the powers of cities and municipalities to impose business taxes on BOI-registered enterprises as provided for in Sec. 133(g) of the LGC.

SECTION 2. Definitions of Terms. - As used herein, the following terms shall mean -

(a) Registered Enterprise - shall mean any individual, partnership, cooperative, corporation or other entity incorporated and/or organized and registered with the Board of Investments (BOI) in accordance with Book I of Executive Order No. 226; Provided, however, that the term "registered enterprise" shall not include commercial banks, savings, and mortgage banks, rural banks, savings and loan associations, development banks, trust companies, investments banks, finance companies, brokers and dealers in securities, consumer cooperatives and credit unions and other business organizations whose principal purpose or principal source of income is to receive deposits, lend or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge other similar intermediary, trust or fiduciary functions. {Art. 11, E.O. 226}

(b) Pioneer enterprise shall mean a BOI-registered enterprise (i) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale, or (ii) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw materials or finished goods which is new and untried in the Philippines, or (iii) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the BOI to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency

and other social benefits of the project, or (iv) which produces non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or manufacturers equipment which utilize non-conventional fuels or sources of energy in its production, manufacturing or processing operations: Provided, that the final product in any of the foregoing instances, involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment.

(c) Non-pioneer enterprise shall include all BOI-registered producer enterprises other than pioneer enterprises.

(d) Expansion shall include modernization and rehabilitation and shall mean increase of existing volume or value of production or upgrading the quality of the registered product or utilization of inefficient or idle equipment under such guidelines as the BOI may adopt.

SECTION 3. Exemption of pioneer and non-pioneer enterprises. - (a) Pursuant to Sec. 133(g) of the LGC and Art. 221(g) of its IRR, business enterprises certified to and registered with the Board of Investments (BOI) as pioneer or non-pioneer shall be exempt from local business taxes for a period of six (6) and four (4) years respectively, from the date of registration;

(b) Starting January 1, 1992, pioneer and non-pioneer enterprises registered with the BOI prior to the effectivity of the LGC shall be exempt from local business taxes until the end of the remaining period of their six (6) and four (4) years exemption from the date of registration.

(c) Pioneer and non-pioneer enterprises registered with the BOI on or after the effectivity of the LGC shall be exempt from local business taxes for a period of six (6) and four (4) years, respectively, starting from the date indicated in the certificate of registration issued by the BOI; and

(d) In the case of registered expanding firms the gross sales or receipts directly arising from such expansion shall be exempt from local business taxes for a period stated in (a) or (b) above.

SECTION 4. Availment of the Exemption. - (a) Within sixty (60) days -

(i)

from the receipt of the Certificate of Registration from the BOI, or

(ii)

from the effectivity of the tax ordinance or revenue measure imposing a tax on business, or

(iii)

from the effectivity of these guidelines, whichever comes later, the President or any duly authorized representative of the registered enterprise, shall submit a BOI-certified true copy of said Certificate of Registration to the local treasurer concerned together with a request for a Certificate of Exemption for the appropriate period, as indicated in Sec. 3 above.

(b) Within fifteen (15) days from submission of its BOI Certificate of Registration by the registered enterprise, the local treasurer concerned shall, after due verification of the documents submitted, issue a Certificate of Exemption, in the form hereto attached as Annex "A", to the registered enterprise,

SECTION 5. Business tax on BOI-registered Enterprises. - For business enterprises registered with the BOI not covered or no longer exempt under Sec. 3 above and whose goods or products are sold abroad and/or domestically, the said enterprises shall be subject to the business tax as follows:

(a) the gross sales/receipts on goods or products sold domestically shall be subject to the business tax at rates

prescribed under paragraphs (a), (b) and (d) of Sec. 143 of the LGC;

(b) the amount of export sales as defined in Sec. 2 (b) shall be subject to the business tax at rates not exceeding one-half ($\frac{1}{2}$) of the rates stated in paragraph (a) of this Section;

For this purpose, the amount of export sales shall be excluded and declared separately from the total sales and shall be subject to the rates prescribed in paragraph (b) above. Failure to make this separate declaration of export sales shall subject the total sales to the rates prescribed in paragraph (a) hereof.

(c) Upon expiration of the period of exemption of BOI-registered enterprises as provided for in the preceding Sec. 3 hereof, the situs of the tax shall be determined in accordance with Sec. 150 of the LGC and Art. 243 of the IRR;

(d) In case of manufacturers or producers which engage the services of an independent contractor to produce or manufacture some of their products, the rules on situs of taxation shall apply except that the factory or plant and warehouse of the contractor utilized for the production and storage of the manufacturer's products shall be considered as the factory or plant and warehouse of the manufacturer; the independent contractor shall not be taxed on the basis of the gross sales of his production of the manufacturer's products but on his gross receipts as independent contractor under Sec. 143(e) of the LGC, as implemented under Art. 232(e) of its IRR.

SECTION 6. Non-separability of business enterprises registered with the BOI. - The provisions of Art. 242 of the IRR requiring a person or entity to secure a separate mayor's permit for each business activity shall not apply to business enterprises registered with BOI, with respect to activities inherent, necessary and incidental to its business operations.

SECTION 7. Transfer or Relocation - In case there is a transfer or relocation of the principal office or of any branch to another city or municipality, due notice or such transfer or relocation shall be given to the chief executives of the cities or municipalities concerned within fifteen (15) days before such transfer or relocation is effected.

(b) The tax due and accruing to the city or municipality shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be.

SECTION 8. Examination of Books of Accounts and Pertinent Records. - (a) The Treasurer of the LGU concerned or through any of his deputies duly authorized in writing may examine the books of accounts and other pertinent records of the business enterprise in order to ascertain, assess, and collect the correct amount of the tax due.

(b) The examination shall be made during regular office hours not oftener than once a year for every tax period, which shall be the year immediately preceding the examination and shall be certified by the examining official. Such certification shall be made of record in the books of accounts of the business enterprise examined.

SECTION 9. Repealing Clause. - All rules, regulations, orders, and/or Circulars previously issued by the Department which are contrary to, or inconsistent with, the provisions of this Circular are hereby repealed or modified accordingly.

SECTION 10. Effectivity. - This Circular shall take effect immediately.

This Circular has been approved and recommended by the Oversight Committee of the Local Government Code for issuance by the Secretary of Finance in accordance with Art. 287 of the IRR.

The Regional Directors of the Bureau of Local Government Finance and District Treasurers of Metropolitan Manila are hereby instructed to disseminate the contents of this Circular to all Provincial, City and Municipal

Treasurers within their respective jurisdictions for their information and guidance.

Adopted: 22 Oct. 1994

(SGD.) ERNEST C. LEUNG

Acting Secretary of Finance

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