REVENUE REGULATIONS GOVERNING THE IMPOSITION OF EXCISE TAX ON MINERALS AND MINERAL PRODUCTS

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SECTION 1. Scope. — Pursuant to the provisions of Section 245 of the National Internal Revenue Code (NIRC), as amended, these Regulations are hereby promulgated to implement the provisions of Section 151, Chapter VII, Title VI of the NIRC as amended by Executive Order No. 273 and further amended by Republic Act No. 7729, imposing excise tax on minerals and mineral products:

SECTION 2. Coverage. — The following goods such as but not limited to those enumerated hereunder shall be considered as minerals and mineral products:

Examples

I. METALS

A. Ferrous

- Iron - Iron ore

- Ferroalloying - Manganese Ore, Metallurgical, Chemical and Refractory Chromite, Molybdenum

B. Non-ferrous

- Base - Copper, Tin, Mercury

- Light - Aluminum, Magnesium, Titanium

- Precious - Gold, Silver, Platinum

- Rare - Uranium, Radium, Beryllium

II. NON-METALS

A. Mineral fuels

1. Fluid

a. Liquid — Indigenous Petroleum
b. Gaseous — Natural Gas

2. Solid

a. Hard coal - Anthracite
b. Soft coal - Semi-Anthracite
c. Compressed coal - Coke

B. Other Non-metals such as but not limited to: Sand and gravel, Stone, Cement materials, Gypsum, Sulfur, Salt, Marble, Limestone, Coral, Shale, Slate, Quartzite, Schist, Volcanic Cinder, Perlite, Tuff, Granite Basalt, Andesite,

Gabbro, Conglomerate and Other Quarried Materials, Phosphate Rock, Potash, Nitrates, Guano and Pyrite, Silica, Feldspar, Talc, Fire Clay, Clay and all varieties of clay, Sandstone, Corundum, ndustrial Diamonds, Pumice, Emery, Magnesia, Asbestos, Mica, Ocher, Clay, Diatomite, Barite, Bentonite, Fuller's earth, Quartz.

This also includes Precious and Semi-precious stones in raw form such as but not limited to: Gem Diamond, Amethyst, Amber, Emerald, Ruby, Garnet, Opal, Agate, Jade, Geode.

SECTION 3. Definition of terms. — For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:

a. "Minerals" shall mean all naturally occurring inorganic substances (found in nature) whether in solid, liquid, gaseous, or any intermediate state.

b. "Mineral products" shall mean things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing by the lessee, concessionaire or owner of mineral lands.

c. "Mineral lands" shall mean lands in which minerals exist in sufficient quantity and grade to justify the necessary expenditures in extracting and utilizing such minerals.

d. "Mineral concentrates" shall mean the product obtained by concentrating disseminated or lean ores by mechanical means, without altering their original chemical composition, to separate the undesirable minerals and/or other constituents.

e. "Lessee" may include a leaseholder, claim owner or operator, quarry licensee or permittee.

f. "Quarry resources" shall mean any common stone or other common mineral substances as the Director of the Bureau of Mines and Geo-Sciences may declare to be quarry resources such as, but not restricted to marl, marble, granite, volcanic cinders, basalt, tuff and rock phosphate, andesite, conglomerate, coral, sand, diatomaceous earth, diorite, decorative stones, gabbro, limestone, red burning clays for pottery and bricks, rhyolite, sandstone, serpentine, shale and volcanic glass: Provided, That they contain no metal or metals or other valuable minerals in economically workable quantities.

Quarry resources shall include sand and gravel whether removed river beds or quarried.

g. "Gross Output" shall be interpreted as the actual market value of minerals or mineral products, or of bullion from each mine or mineral lands operated as a separate entity without any deduction from mining, milling, refining, (including all expenses incurred to prepare the said minerals or mineral products in a marketable state) as well as transporting, handling, marketing, or any other expenses, except as provided in Section 5 (B) hereof.

h. "Indigenous petroleum" shall include locally extracted mineral oil, hydrocarbon gas, bitumen, crude asphalt, mineral gas and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or stratified mineral deposits:

i. "Integrated operations" shall be interpreted as operations of an establishment or company engaged in the manufacture of products or articles such as cement, ceramics, glass products/wares, bottles, concrete products, iron or steel or any product using, minerals or quarry resources as raw materials, and at the same time own, lease or operate the quarry/mine.

j. "Quarry cost" shall include all costs and expenses involved in the extraction of the minerals.

k. "Cost of Goods Sold" shall mean the cost of production of finished goods sold in a given period.

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l. "Average selling price" shall refer to that average price based on the number of fluctuations during a given period.

SECTION 4. Persons liable. — All lessees, concessionaires, owners or operators of mines, processors of minerals, licensees or permittees of quarry/mines, producers or manufacturers of mineral products, whether natural or juridical persons, shall be liable to the payment of the excise tax due on minerals, mineral products and quarry resources removed from the minesite and/or place of production. Should minerals, mineral products or quarry resources be removed from the minesite and/or place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

SECTION 5. Payment of Excise Tax on Minerals and Mineral Products. —

A. Rate and Base of Tax. — There shall be levied, assessed and collected on mineral, mineral products and quarry resources, excise tax as follows:

1) On coal and coke, a tax of Ten pesos (P10.00) per metric ton.

2) On all non-metallic minerals and quarry resources, a tax of Two percent (2%) based on the actual market value of the annual gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation.

3) On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value added tax, in the case of importation, in accordance with the following schedule:

- Copper and other metallic minerals:

(i)

On the first three (3) years upon the effectivity of R.A. 7729, one percent (1%);

(ii)

On the fourth and the fifth year, one and half percent (1 1/2%); and

(iii)

On the sixth year and thereafter, two percent (2%).

- Gold and chromite, two percent (2%).

4) On indigenous petroleum, a tax of fifteen percent (15%) of the fair international market price thereof, on the first taxable sale, such tax to be paid by the buyer or purchaser within 15 days from the date of actual or constructive delivery to the said buyer or purchaser. The phrase "first taxable sale, barter, exchange or similar transaction" means the transfer of indigenous petroleum in its original state to a first taxable transferee. The fair international market price shall be determined in consultation with an appropriate government agency.

B. Determination of Value of Minerals and Mineral Products

1. Allowable Deductions - Generally, the taxes herein imposed are based on the actual market value of minerals, mineral products or quarry resources at the time of removal from the locality where mined or place of production without the benefit of any deduction for mining, milling, refining, including all expenses incurred to prepare the

said minerals or mineral products in a marketable state, transporting, handling, marketing or any other expenses, except as stated herein below:

- If the minerals or mineral products are sold or consigned abroad by the lessee, owner or operator of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be allowed as deductions from the actual market value of the minerals shipped to arrive at the tax base.

- In the case of mineral concentrates not traded in commodity exchanges in the Philippines or abroad such as copper concentrate, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining and other changes incurred in the process of converting the mineral concentrates into refined metal traded in those commodity exchanges. These deductions shall be in addition to those allowed in the preceding sub-section if the mineral concentrates are sold or consigned abroad by the lessee, owner or operator of the mine under C.I.F. terms.

2. Mineral Concentrates When Exported - here the actual market value of the mineral concentrates is not determinable on the date of exportation, the basis of the excise tax shall be the amount appearing in the provisional invoice issued by the exporter. The determination of the actual market value shall be made within 90 days from the date of actual exportation. Where the actual market value is not determinable within the period prescribed herein, the Regional Director concerned, upon request by the taxpayer may, in meritorious cases, grant an extension of the period within which to submit the final invoice corresponding to the mineral concentrate exported.

3. Minerals When Used as Raw Materials in Integrated Operations - Where removals of minerals are not intended for sale but are to be used as raw materials, the determination of the actual market value shall be made in accordance with the following formula:

Actual Market = Quarry Cost per unit X Ave. Selling

Value of the
raw material

Cost of Goods Sold
per unit

Price of the
manufactured
per unit
or finished
product per
unit

Example : Cement factory using lime extracted from its own quarry.

Given

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Total Quarry Cost

= P100,000.00

Cost of Goods Sold

= P1,000,000.00

Average Selling Price

= P45.00/bag

Total Production

= 100,000 bags

Solution :

Quarry Cost per bag

= 100,000.00

= P 1.00

100,000 bags

Cost of Goods Sold
per bag

= P1,000,000.00
100,000 bags

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= P10.00

Market value of quarried material per bag

= Quarry Cost/bag x Ave. Selling Price/bag

Cost of Goods Sold/bag

= P1.00 x P 45.00/bag

P10.00

= P 4.50 per bag

Excise Tax

= Actual Market Value x Production (in bags)

x Excise Tax Rate

= P 4.50 x 100,000 x 2%

= P 9,000.00

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4. Requirements prior to removal of minerals, mineral products and mineral concentrates intended for export.

- Every shipment of minerals, mineral products and mineral concentrates intended for export shall be covered by a permit to be secured from the Revenue District Officer (RDO) having jurisdiction over the minesite or place of production as the case may be.

- The application shall state the kind and quantity of the goods to be exported; the destination and consignee thereof; name and voyage number of the loading vessel; and attaching therewith a certified true copy of the provisional invoice in the case of exportation of mineral concentrates.

- When deemed necessary, file an exporter's bond prior to the removal of the goods for shipment in the form and amount as the Commissioner may require, conditioned upon the payment of excise tax due on the mineral concentrates upon the final determination of the actual market value of the refined mineral product content of the concentrate exported.

In all cases, proof of exportation shall be submitted to the Revenue District Officer concerned, within 30 days from the date of actual exportation.

C. Time, Manner and Place of Payment —

Unless otherwise provided, the excise tax on minerals and mineral products shall be due and payable upon removal of the minerals or mineral products or quarry resources from the locality where mined or upon removal from customs custody in the case of importations.

1 Upon removal — Any person liable to pay the excise tax on locally produced or extracted mineral, mineral products or quarry resources shall, before removal of such products file in triplicate, a return (BIR Form No. 2223) setting forth the quantity and actual market value of the mineral or mineral products to be removed and pay the excise taxes due thereon to an accredited bank in the city or municipality of the place where the mine is located. In place(s) where there are no accredited banks, the return shall be filed to the Collection Officer, or duly authorized Treasurer of the Municipality where the mine is located, in case there is no Collection Officer stationed thereat.

2 Quarterly basis — The output of mine may be removed from such locality without prepayment of such excise taxes if the lessee, owner, or operator of the mining claim shall file a bond conformably with Sec. 151(c) of the

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NIRC, as amended, in the form and amount and with such sureties as the Commissioner may require, conditioned upon the payment of such excise taxes. It shall be the duty of every lessee, owner or operator to make a true and complete return (BIR Form No 2223) in triplicate setting forth the quantity and the actual market value of the minerals or mineral products, or quarry resources removed during such calendar quarter, of the balance, if any, in cases where payments are made upon removal, and pay the excise taxes due thereon within 20 days after the end of such quarter to an accredited bank in the city or municipality where the mine is located. In place(s) where there are no accredited banks, the return shall be filed to the Collection Officer, or the duly authorized Treasurer of the Municipality where the mine is located, in case there is no Collection Officer stationed thereat.

D. Payment of Excise Tax on Imported Minerals and Mineral Products —

The excise tax on imported minerals and mineral products or quarry resources shall be paid before the release of such goods from customs custody. The owner or importer shall apply in writing for an authority to release imported minerals and mineral products (ATRIG) with the Revenue District Officer (RDO) having jurisdiction over the importer's principal place of business. However, if the importer is engaged in the production/manufacture of minerals and mineral products, the application shall be filed with the Revenue District Officer under whose jurisdiction the applicant's manufacturing/production plant is located, submitting therewith copies of consular invoice, commercial invoice, bill of lading, packing list, Import Entry and Internal Revenue Declaration. Proof of payment of the excise tax shall be delivered to the Revenue Officer designated to verify the release of the imported goods.

SECTION 6. Requirements to Engage in Business. — Any person or entity who desires to engage in the business of exploring, developing, exploiting and disposing minerals or mineral products and quarry resources on mineral lands shall first apply to the Regional Director under whose region the activities are to be conducted and shall state among others, the name of the applicant, the business name, and the principal office or place of business. The following papers and documents shall be attached to the application:

1. Location sketch and blue print of the plat and plan of the mining site/place of production;

2. Approval of the license to engage in such business by the Bureau of Mines and Geo-Sciences;

3. Certificate of Registration with Bureau of Trade;

4. Duplicate or Certified True Copy of the latest income tax return of the applicant;

5. If the applicant is a corporation or partnership, a Certified True Copy of the Articles of Incorporation and By-laws or Co-Partnership registered and approved by the Securities and Exchange Commission.

6. Manufacturer's or Producer's Bond conformably with Sec. 160 of the NIRC, as amended, in the amount equal, as nearly as can be estimated, to twenty per centum of the taxes payable by them during an average year. Such bond shall be conditioned upon faithful compliance, during the time such business is pursued, with the laws and regulations relating to such business and shall guarantee the satisfaction of all fines and penalties imposed by the Tax Code, as amended. No such bond shall be required in an amount exceeding Five hundred thousand pesos (P500,000) or received in a sum less than Ten thousand pesos (P10,000).

SECTION 7. Official Register Book (O.R.B.)
A. Records to be Kept - Every lessee, concessionaire, owner or operator of mines or quarry, processor of minerals, producer or manufacturer of mineral products shall keep and maintain an Official Register Book (O.R.B.) and such other forms or records that may be required by the Commissioner from time to time.

The lessee, concessionaire, owner or operator of mines or quarry, processor of minerals, producer or manufacturer

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of mineral products shall from day to day, or on such dates when transactions are made, enter in the O.R.B. (BIR Form No. 2222) on the debit side and in proper columns provided therefore, the date, kind and quantity of the minerals or mineral products or quarry resources extracted or produced. On the credit side of the O.R.B. will be shown on the proper column provided therefore, the date, kind and quantity of the minerals and mineral products or quarry resources removed, as well as the actual market value thereof and the excise tax paid.

The O.R.B. shall be delivered and installed by an authorized Revenue Officer, who shall enter in the fly leaf of the O.R.B. the date of the delivery of the book, the name of the lessee, owner or operator of mines, or quarry. The Revenue Officer installing the book shall attest to the fact that all the provisions of law and these regulations have been fully explained to him and that he fully understands the same and knows the penalties and punishments imposed for the violations thereof. The original of the certificate shall be forwarded to the Regional Director concerned thru the Revenue District Officer, while another copy shall be affixed permanently in the O.R.B.

All records pertinent to the operations such as but not limited to the O.R.B. shall be kept at all times at the establishment or office where the mine or quarry resources is located. These records shall be made available to any authorized Revenue Officer(s) for inspection/ examination during reasonable hours of a business day.

B. Transcript Sheets of Official Register Books — The lessee, concessionaire, owner or operator of mines or quarry, processor of minerals, producer or manufacturer of mineral products shall within the' first 10 days of each month, submit to the RDO concerned, a true and exact copy of all entries made on both the debit and credit side of the O.R.B. during the preceding month, including entries made by authorized Revenue Officer(s). At the foot thereof, the proprietor thereof or his duly authorized representative shall certify that the entries contained therein are true and correct and are the exact copies of the entries shown in the corresponding O.R.B. for the month.

The temporary suspension of activities and transactions notwithstanding, the monthly transcript sheets shall be submitted.

C. Completion of the Official Register Books — When all pages in an Official Register Book have been filled, the proprietor of mines or quarry shall secure a new Official Register Book from the RDO concerned. The balance in the completed O.R.B. shall thereupon be carried forward to the new one together with the delinquency and stocktaking records in the old O.R.B.

D. Preservation of Books and Other Records — All lessee, concessionaire, owner or operator of mines or quarry, processor of minerals, producer or manufacturer of mineral products shall preserve for the period prescribed in Section 235 of the Tax Code, as amended, all O.R.B. and other records kept in connection with their business, and upon demand, deliver or transmit the same to any authorized Revenue Officer.

SECTION 8. Sworn Statement. — Every lessee, concessionaire, owner or operator of mines or quarry, processor of minerals, producer or manufacturer of mineral products shall file with the RDO concerned, on or before the last working day of January of each year and every six months thereafter or as often as may be required, a sworn statement showing among other information, the kind, quantity, actual market value of the minerals and mineral products extracted or produced as well as the cost of production and expenses incurred or to be incurred until the minerals or mineral products are finally sold.

A duplicate copy of the inventory of minerals and mineral products extracted or produced which are submitted at the close of each calendar year or accounting period for internal revenue purposes pursuant to Section 13 of RR No. V-1 (Bookkeeping Regulations) should also be furnished the RDO concerned on or before January 31 following each calendar year. casia

SECTION 9. Stocktaking/Investigation. — The Commissioner or his duly authorized representative shall cause at

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least once a year at anytime he may direct, the conduct of inventory of all stocks of minerals or mineral products on hand. A representative of the lessee, owner or operator of mine or quarry/manufacturer of mineral products shall be present for the purpose of verifying the figures obtained. The Revenue Officer(s) conducting the inventory shall immediately take up the difference and debit or credit, any excess or shortage, as the case may be, in the O.R.B. and make a full report to the Commissioner with his recommendations.

SECTION 10. Assignment of Revenue Officers. — The Commissioner or his duly authorized representative shall assign such number of Revenue Officers, whenever necessary at the mine site or place of production to supervise the operation thereat for internal revenue purposes, and at the Bureau of Customs to check the excise tax payments and verify the release of imported goods.

The lessee, owner or operator of mines or quarry/manufacturer of mineral products shall provide a suitable office space and equipment for use of the Revenue Officers assigned thereat and, should overtime service be required, adequate lodging facilities likewise be provided.

SECTION 11. Penalties. — Violations of these regulations shall be subject to the pertinent penalties under Title X of the National Internal Revenue Code, as amended.

SECTION 12. Repealing Clause. — All regulations, rulings, administrative orders and general circulars or parts thereof, which are contrary or inconsistent herewith are hereby repealed, amended or modified accordingly.

SECTION 13. Effectivity. — These Regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation in the Philippines.

Adopted: 20 July 1994

(Sgd.) ROBERTO F. DE OCAMPO
Secretary of Finance

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