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DISSEMINATING THE RULING OF THE COMMISSIONER OF INTERNAL REVENUE ON THE NON-ELIGIBILITY FOR VAT ZERO-RATING OF AUTOMOBILE SALES TO ENTITIES REGISTERED WITH PEZA, SBMA AND CLARK ...

BIR REVENUE MEMORANDUM CIRCULAR NO. 25-99, March 18, 1999

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Quoted hereunder is the memorandum ruling of this Office dated February 2, 1999 holding that sales of ordinary automobiles to PEZA or SBMA and other ECOZONE registered enterprises are not entitled to VAT zero-rating:

> "This refers to the issue of whether or not automobile suppliers may be entitled to the benefit of VAT zero-rating pertaining to their sales of cars to enterprises registered with PEZA, SBMA or CDA.
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> "Admittedly, we have a previous ruling (BIR Ruling No. DA-153-97) holding that sales of automobiles may be zero-rated pursuant to the provision of then Section 100(a)(2)(c) [now Section 106(A)(2)(c)] as implemented by Revenue Regulations No. 7-95 that sales to persons and entities whose exemption under special laws, e.g. RA Nos. 7227 and 7916, effectively subject such sales to zero-rate. Furthermore, with respect to the sales of goods or merchandise to such entities, it has been well settled that the same shall be treated as export sales pursuant to the provision of Article 77(2) of E.O. 226, otherwise known as the Omnibus Investments Code, which provision is likewise made applicable to PEZA or SBMA locators. The question that now arises is whether or not it is legally correct to hold that ordinary cars, vehicles or automobiles may be considered embraced within the definition of 'goods or merchandise' entitled to the benefit of zero-rating.
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> "The definition of what comprises merchandise or goods is found under Section 2(ii) of R.A. 7916, as follows:
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> "ii. 'Merchandise or Goods' shall collectively refer to raw materials, supplies, equipment, machineries, spare parts, packaging materials or wares of every description to be used in connection with the registered activity of an ECOZONE enterprise." (Underscoring supplied).
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> "The use of the phrase "to be used in connection with the registered activity of an ECOZONE enterprise" in describing what comprises merchandise or goods imparts the presumption that the same are somehow utilized in the production activity of an ECOZONE enterprise. This is confirmed by referring to the Rules and Regulations to Implement R.A. 7916. Rule XV thereof which deals with the incentives granted to ECOZONE export and free-trade enterprises, provides, thus:
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> "SECTION 1. Exemption from Duties and Taxes on Merchandise. — Merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the ECOZONE Restricted Area by an ECOZONE Export or Free Trade Enterprise to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations of the Philippines nor to local tax ordinances. x x x" (Underscoring supplied)
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> "Applying the foregoing provisions, it would now appear that cars or automobiles could not be possibly embraced within the classification of goods or merchandise entitled to the benefit of tax exemption.

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"On the other hand, we find specific reference to the kind of vehicles which may be extended such tax exemption privilege and this can be likewise found in the same Rule XV of the Rules and Regulations to Implement R.A. 7916 in this wise:

"D. Importation of Specialized Vehicles and Other Transportation Equipment — Specialized vehicles and other specialized transportation equipment, including necessary spare part, directly related to the registered activity of the ECOZONE Export or Free Trade Enterprise, may be imported exempt from customs duties and taxes only upon prior approval of the Board and with proper clearance from the appropriate government agency(ies). Otherwise, ordinary vehicles and other transportation equipment, including necessary spare parts, whenever applicable shall be procured locally." (Underscoring supplied)

"The plain meaning and significance of the above provision need no further construction in arriving at the obvious conclusion that 1) only specialized vehicles may be allowed to be imported free from duties and taxes; and that 2) ordinary commercial vehicles shall be purchased locally which necessarily includes all component duties and taxes. In this regard, we agree to the observation taken by Mrs. Elvira R. Vera, former Chief of the Regulatory Operations Monitoring Division, in her memorandum dated August 3, 1998, as concurred by the present ROMD Chief, Director Enrique Ramos, that:

"Pursuant to the Rules XV, Section 1(D) of the Rules and Regulations issued by PEZA to implement the Special Economic Zone Act of 1995 (RA No. 7916), exemptions from the imposition of value-added tax are being allowed only with respect to importation of specialized vehicles and other transportation equipment that are directly related to the registered activity. For example, a registered construction firm may import specialized vehicles such as pay loaders, graders, etc. without the payment of the value-added tax. However, exemption does not extend to importation of service vehicles since the same are not directly related to its registered activity as a construction contractor. As a matter of policy, PEZA is not giving tax incentives for the procurement of vehicles or transportation equipment that are not directly connected with the firms' registered activities in view of the absence of an effective monitoring system to determine whether these vehicles are indeed being utilized by registered enterprises in the conduct of their registered activities. It appears, therefore, that with the issuance of the aforementioned ruling, the BIR is more liberal in the grant of tax incentives to locators inside the PEZA zone"

"In view hereof, the Regulatory Operations Monitoring Division is hereby directed to deny all applications for effective zero-rating of the sales of automobiles to enterprises registered with PEZA, SBMA and CDA and other ECOZONES now or hereinafter established pursuant to RA Nos. 7227 and 7916. All BIR rulings and issuances inconsistent with this directive are hereby revoked, superseded or modified accordingly, subject to the non-retroactivity provision of Section 246 of the Tax Code 1997."

All internal revenue officers and employees are hereby directed to give this Circular the widest publicity possible.

Adopted: 18 March 1999

(SGD.) BEETHOVEN L. RUALO
Commissioner of Internal Revenue

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