



REPUBLIC OF THE PHILIPPINES
BUREAU OF LOCAL GOVERNMENT FINANCE
DEPARTMENT OF FINANCE
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1st Indorsement
August 22, 2011

Respectfully referred to the City Treasurer, Caloocan City for appropriate action the herein letter dated July 20, 2011 of [REDACTED], Aquaprime Philippines International, Inc. (APII), requesting opinion as to whether APII is subject to business tax under Section 143(h) of the Local Government Code (LGC) of 1991 and as implemented under Sec. 66(22) of City Ordinance No. 0386 Series of 2004 of that City.

Representations are made that APII is a domestic corporation engaged in the manufacture of fish feeds and duly organized and existing under the laws of the Philippines. APII is registered with the Securities and Exchange Commission (SEC) per Certificate of Registration No. [REDACTED] issued on December 9, 1988. Further, due to financial losses APII stopped its operations effective October 1, 2007. In the process of winding up the operation of corporation, APII sold its land and building to Social Homes Inc.

Furthermore, during the process of transferring the ownership of said property, Social Homes Inc. informed that they (APII) were being assessed by the Business Permit and License Office (BPLO) of Caloocan City for business tax on the sale of asset in the amount of 3% of the selling price of the property as if APII is falling under the classification of a real estate dealer.

From the above representations it appears that the assessment of business tax on the sale of the assets of APII was made on the basis of Section 66 (22) of the City Ordinance No. 0386 S. 2004, which reads:

“Section 66 Imposition of Tax – There is hereby imposed an annual tax on the following persons, natural or juridical, who establish, operate, conduct or maintain their respective businesses within the City of Caloocan at the rates prescribed hereunder:

“x x x

“(22) On any business not specifically mentioned in the preceding paragraphs and other sections of this code but operating within the territorial jurisdiction of Caloocan City shall pay the tax at the rate of three percent (3%) on the gross receipts or sales of the preceding calendar year.”

It may be pointed out that the abovequoted Section 66 specifically limits its application to businesses operating within the City of Caloocan subject to annual tax. It was contended however that since APII is no longer engaged in any business activity thereat, it shall not be subject to a business tax.

Furthermore, Section 131(d) of the LGC is quoted hereunder:

“Section 131. Definition of Terms. – When used in this Title, the term:

“(a) x x x;

“(d) **Business** means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit;

“x x x.”

In this connection, it may be stated that the sales transaction involved between APII and Social Homes, Inc. is not the regular and normal course of business of the company. The sale may be considered as an isolated transaction and cannot be regarded as “**business**” as defined in the above-mentioned provision of the LGC. Therefore, APII does not qualify as a real estate dealer thus cannot be subject to, or be liable to pay any local business tax as a real estate dealer or as a business entity operating within the territorial jurisdiction of Caloocan City.

Moreover, APII cannot be classified as “any other business” under Sec. 143(h) of the LGC and implemented under Sec. 66 of Ordinance No. 0386 of Caloocan City as the company falls squarely within the scope of Section 143(c) of the same Code, that is, manufacturer of animal and aquatic feeds among others, which are considered “essential commodities”.

It bears emphasis, however, that under Section 135, in relation to Sec. 151 of the LGC, it is provided that “*the province may impose a tax on the sale, donation or barter, or on any other mode of transferring ownership or title of real property.*” Clearly therefore, the sale of the asset of APII to Social Homes, Inc. is subject to the transfer tax but not to business tax per Assessment Notice dated July 12, 2011 of the BPLO of Caloocan City.

Be guided accordingly.



MA. PRESENTACION R. MONTESA, CESO III
Executive Director