



Republic of the Philippines
Tourism Infrastructure & Enterprise Zone Authority
MANILA

Mark T. Lapid
Chief Operating Officer

February 13, 2014

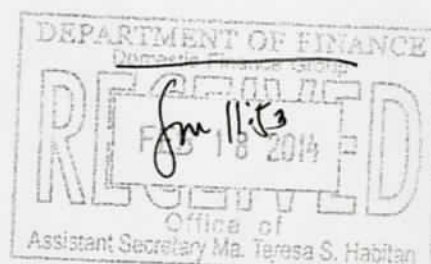
HON. SOLEDAD EMILIA J. CRUZ

Assistant Secretary

C AG – Corporate Concerns Office

Department of Finance

Roxas Boulevard corner Pablo Ocampo Sr. Street
Manila



Dear Assistant Secretary Cruz:

This is in connection with your letter dated 06 February 2014 pertaining to TIEZA's (formerly Philippine Tourism Authority) compliance with Republic Act No 7656 entitled "An Act Requiring Government-Owned or Controlled Corporations (GOCC) to Declare Dividends under Certain Conditions to the National Government and For Other Purposes".

Please be advised that TIEZA is exempted from the statutory requirement of remitting dividends as mandated by RA No 7656. This exemption is provided for under Section 68 of the Implementing Rules and Regulation of RA No. 9593 otherwise known as Tourism Act of 2009, which reads as follows:

"Section 68 – Exemption from Statutory Remittance of Dividends.

The TIEZA's share from the collection of travel tax, together with the proceeds from back taxes, other fees and charges and other income which the TIEZA is authorized to collect and/or earn and which shall be used for the operations of the TIEZA, shall be exempt from statutory remittance of dividends as mandated by RA No. 7656".

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Philippines 

Likewise, even prior to the foregoing, the PTA share in the collection of travel taxes was not subject to the Dividends Law (RA No. 7656). This is contained in the Department of Justice Opinion No. 106, s. 1996 dated December 04, 1996, to wit:

"The travel and hotel room taxes collectible by and/or accruing to the PTA, are not earnings of the PTA subject to the Dividends Law (RA No. 7656) mandating that 50% of the annual net earnings of GOCC's shall be remitted the National Treasury. Very clearly, such taxes are not corporate income of the PTA or income derived from its operations but are actually income of the National Government and earmarked by law for the exclusive use and purposes of the PTA. The travel and hotel room taxes allocated to, or earmarked for, the PTA are in nature of a subsidy by the government to the PTA and, as such the same are deemed outside the purview of the Dividend Law because they are not income or earnings of the PTA derived from corporate activities'.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MARK T. LAPID', with a stylized flourish above it.

MARK T. LAPID
Chief Operating Officer

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

December 4, 1996

OPINION NO. 106, S. 1996

Undersecretary Milwida M. Guevara
Department of Finance
M a n i l a

M a d a m:

This has reference to your request for opinion regarding the applicability of the provisions of Republic Act No. 7656 (Dividend Law) to the Philippine Tourism Authority (PTA).

It appears that the instant query arose due to the alleged failure of the PTA to remit the dividends due from its 1993 and 1994 incomes as mandated by R.A. No. 7656. The PTA claims that pursuant to Chapter II, Section 5, subsection G, paragraph 9 of P.D. No. 664, it is mandated to collect travel taxes imposed under R.A. No. 1478. As such, it only acts as a collecting agent for the National Government and that the amount collected does not form part of PTA's earnings.

It is your position, however, that the Dividend Law would still apply to the portion retained by PTA for the following reasons:

1. Section 3 of R.A. No. 7656 provides that all government-owned or controlled corporations (GOCCs) shall remit 50% of their annual net earnings to the National Government.

2. The PTA earnings include earnings from subsidiaries/real properties under its jurisdiction in addition to travel tax and hotel room tax collections.

3. Dividend collections from GOCCs is an integral component of National Government revenue forecasting and any financing setback would affect not only the PTA but other levels as well.

In a letter dated November 11, 1996, the PTA, through its ex-officio Chairman, Tourism Secretary Mina Gabor, expressed its position that the travel taxes being collected by, and assigned to, the PTA under its Charter "cannot, and should not, be considered as falling within the ambit of the term 'revenue' as used in the Dividend Law", although it

"does not dispute that other income derived from the operation of its entities is includible in the computation of corporate-revenues".

From the foregoing, it appears that the only issue to be resolved is whether or not travel taxes and hotel room taxes collected by the PTA are earnings of the PTA subject to the Dividend Law.

To resolve the issue, it will be useful to consider the following pertinent provisions of laws:

- 1) R.A. No. 1478 (Charter of the Board of Travel And Tourist Industry) [1956]

"SEC. 3. To carry out the aims and purposes of this Act, a tax shall be collected on all fares of passengers leaving the country as well as fares for those returning or coming in, if payable here, at the following rates: xxx
xxx". (Emphasis supplied.)

"SEC. 5. An amount not in excess of 50 per cent of such collections and all those which may be effected under section six shall accrue to the funds of the Board to be spent under its authority exclusively for the development of tourist facilities and the promotion of tourism both within the country and abroad, through all well-known media but especially through foreign publicity and advertising. The other fifty percent shall accrue to the general funds of the Government and shall be accounted for and delivered by the Board of Travel and Tourist Industry to the Treasurer of the Philippines". (Emphasis supplied.)

- 2) R.A. No. 6141 (providing for additional travel tax) [1970]

"SEC. 6. Additional tax on travel.-

x x x x x x x x x

Out of the total proceeds from the additional tax on travel; two million pesos shall accrue annually to the funds of the Board of Travel and Tourist Industry to be spent exclusively for the

development and maintenance of the Rizal Park xxx [and] other public parks. xxx (Emphasis supplied.)

- 3) P.D. No. 189 (law creating the Department of Tourism and the Philippine Tourism Authority) [1973]

"SEC. 11. Capitalization.- The capital of the Authority [Philippine Tourism Authority] shall consist of (1) existing assets transferred to it from the Board of Travel and Tourist Industry and the Philippine Tourist and Travel Association as hereinafter provided and such other properties as may be contributed to the Authority by the Government to form part of its capital and

(2) the taxes under Republic Act No. 1478 and Republic Act No. 6141. All hotel room taxes that will be collected under the provisions of existing laws are likewise assigned to the Authority to form part of its capital". (Emphasis supplied.)

"SEC. 10. Purpose and Specific Powers.- The purposes and specific powers of the Authority are as follows:

x x x x x x x x x

(b) Collect such taxes as may be provided by law;

x x x x x x' x x x."

- 4) P.D. No. 564 (Revised Charter of the Philippine Tourism Authority) [1974]

"SEC. 5. Specific Functions and Powers.-

x x x x x x x x x

G. OTHER POWERS AND FUNCTIONS

x x x x x x x x x

"9. Collection of Fees, Charges, etc. - To collect such fees and charges as may be imposed and assigned to it under this Decree or other laws: Provided That

all taxes accruing to the Philippine Tourism Authority under this Decree and other laws, which will be collected by the Bureau of Internal Revenue and the Bureau of Customs, shall be remitted to the Authority quarterly." (Emphasis supplied.)

"SEC. 7. *Operating Expenses.* - The operating expenses of the Authority shall be funded from:

- (a) The proceeds of taxes imposed under Republic Act No. 1478 and Republic Act No. 6141;
 - (b) Proceeds from all fees and other charges, as well as rentals and other incomes which the Authority is authorized to impose, collect, and/or earn under this Decree, and other existing or future laws or decrees;
 - (c) Drawings upon the capital of the Authority if necessary". (Emphasis supplied.)
- 5) P.D. No. 1447 "Instituting a Procedure for the Management of Proceeds of Taxes and Fees Earmarked for or Administered by the Philippine Tourism Authority" [1978]

"SECTION 1. All funds earmarked for or administered by the PTA pursuant to P.D. No. 189, as amended by P.D. No. 564 collected by the Philippine Tourism Authority and/or government agencies shall be remitted to the National Treasury on a quarterly basis."

"SEC. 2. The proceeds of all collections pursuant to Section 1 hereof, shall be utilized exclusively for the operations and projects of the Philippine Tourism Authority and shall be released automatically by the National Treasury upon approval by the PTA Board of its budgetary requirements, as an exception to P.D. No. 1234 and the budgetary processes provided in P.D. No. 1177: Provided, That fund releases for expenditures on capital outlays and special undertakings shall be subject to specific approval by the President." (Emphasis supplied.)

Section 3 of R.A. No. 1478, *supra*, imposed a travel tax on all fares of departing and arriving international passengers. Section 5, also *supra*, allocates 50% of the travel tax collections to the Board of Travel and Tourist Industry, exclusively for the development of tourist facilities and the promotion of tourism.

In 1970, R.A. No. 6141 was enacted providing for an additional tax on travel. Out of the total proceeds from such additional travel tax, two million pesos (P2 M) are allocated annually to the Board of Travel and Tourist Industry to be spent exclusively for the development and maintenance of the Rizal Park and other public parks (see Sec. 6, *supra*).

When the PTA was created under P.D. No. 189 to replace the Board of Travel and Tourist Industry, the travel tax collections under R.A. No. 1478 and R.A. No. 6141, as well as hotel room taxes collectible under existing laws, were made part of the capital of the PTA (see Sec. 11, *supra*). The PTA was expressly empowered to collect such taxes (see Sec. 10, also *supra*). It is worthy to note that Section 11 of P.D. No. 189 effectively earmarked all of the travel tax collections under R.A. No. 1478 and R.A. No. 6141 for the PTA to form part of its capital, and not a mere 50% thereof as earlier provided in Section 5 of R.A. No. 1478, *supra*.

Subsequently, the revised PTA Charter (P.D. No. 564) provided in Section 7 thereof (see *supra*) that the travel taxes imposed under R.A. No. 1478 and R.A. No. 6141, together with the proceeds from other fees and charges, rentals and other incomes which the PTA is authorized to collect and/or earn shall be used to fund the operating expenses of the PTA.

The same travel taxes, being among the funds earmarked for or administered by the PTA pursuant to P.D. No. 189, as amended by P.D. No. 564, shall, as provided for in Sections 1 and 2 of P.D. No. 1447, *supra*, be remitted to the National Treasury and utilized exclusively for the operations and projects of the PTA and shall be released automatically by the National Treasury upon approval by the PTA Board of its budgetary requirements.

Based on the foregoing provisions, it is our view that the travel and hotel room taxes collectible by and/or accruing to the PTA are not earnings of the PTA subject to the Dividend Law (R.A. No. 7656)

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The same travel taxes, being among the funds earmarked for or administered by the PTA pursuant to P.D. No. 189, as amended by P.D. No. 564, shall, as provided for in Sections 1 and 2 of P.D. No. 1447, *supra*, be remitted to the National Treasury and utilized exclusively for the operations and projects of the PTA and shall be released automatically by the National Treasury upon approval by the PTA Board of its budgetary requirements.

Based on the foregoing provisions, it is our view that the travel and hotel room taxes collectible by and/or accruing to the PTA are not earnings of the PTA subject to the Dividend Law (R.A. No. 7656)

OPINION NO. 100, S. 1994


mandating that 50% of the annual net earnings of GOCCs shall be remitted to the National Treasury. Very clearly, such taxes are not corporate income of the PTA or income derived from its operations but are actually income of the National Government and earmarked by law for the exclusive use and purposes of the PTA. In fact, pursuant to P.D. No. 1447, such taxes, although earmarked for the PTA, are to be remitted to the National Treasury and released automatically to the PTA upon approval of its budgetary requirements. The travel and hotel room taxes allocated to, or earmarked for, the PTA are in the nature of a subsidy by the government to the PTA and, as such, the same are deemed outside the purview of the Dividend Law because they are not income or earnings of the PTA derived from its corporate activities. Corporate income, we believe, is the kind of "earnings" contemplated by the Dividend Law in the light of the policy stated therein as follows:

"SECTION 1. Declaration of Policy.-

It is hereby declared the policy of the State that in order for the National Government to realize additional revenues, government-owned or controlled corporations, without impairing their viability and the purposes for which they have been established, shall share a substantial amount of their net earnings to the National government." (Emphasis supplied.)

Please be guided accordingly.

Very truly yours,


TEOFISTO T. GUINGONA, JR.
Secretary

Copy furnished :

The Chairman
Philippine Tourism Authority
Department of Tourism
Manila