



Technical Report

Streamlining the BIR Tax Rulings Process Phase 1 – Systems Investigation

by **Januario C. Aliwalas and Edmund Guamen, jointly with the BIR Legal Service**

Prepared for

**Asst. Commissioner James Roldan, Legal Service
Bureau of Internal Revenue (BIR), and
former Undersecretary Emmanuel P. Bonoan
Department of Finance
Republic of the Philippines**

Submitted for review to

USAID/Philippines OEDG

October 2006



Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

EMERGE assistance for this task was initially requested by letter dated 21 March 2005 from then Department of Finance (DOF) Undersecretary Emmanuel P. Bonoan to USAID Mission Director Michael J. Yates. The activity was put on hold due to subsequent DOF personnel changes. The request for assistance was later revived by Assistant Commissioner James Roldan of the Bureau of Internal Revenue (BIR) Legal Service to provide technical assistance to improve the framework and procedures in the issuance of tax rulings. The activity was to consist of 1) an update of a USAID-funded tax rulings study conducted for BIR in 2002, from which corrective measures based on the findings were to be developed, and 2) an enhancement of the management and processes of tax rulings with a new systems design and procedural automation. However, the BIR Management Committee decided they could handle the first task themselves and that the EMERGE consultants should concentrate on helping the Legal Service with the second one. EMERGE contracted Januario C. Aliwalas and Edmund Guamen for the task, which was divided into four components, each of which, after completion, is the subject of a separate report:

Part 1 - Systems Investigation

Part 2 - Systems Analysis

Part 3 - Systems Design – Overall System (with Manual Components)

Part 4 - Systems Specifications for the Computerized Component

The views expressed and opinions contained in these reports are those of the authors and are not necessarily those of USAID, the GRP, EMERGE or its parent organizations.

Streamlining the BIR Tax Rulings Process

**A Joint Project of the BIR Legal Service and
The USAID under the EMERGE Project**

REPORT # 1

Phase 1 – Systems Investigation

October 2006

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PART I - DETAILED DESCRIPTION OF THE CURRENT TAX RULING PROCESS FLOW AT THE NATIONAL OFFICE

1. Step 1 - A request for tax ruling is filed

- 1.1. The request can be filed by a taxpayer (individual/corporation), law/accounting firms, BIR interoffice, the Office of the President, the Senate, the House of Representatives, or any Government Agency.
- 1.2. The usual format is a letter coming from a taxpayer or any of the filers above. Some requests take the form of a memorandum from a government agency addressed to the BIR.
- 1.3. Most of the requests are hand carried personally by the taxpayer or his representative. Some (about 10 to 15%) are received by registered mail.
- 1.4. If the request is related to case which is the subject of an ongoing investigation by any agency, the letter is usually accompanied by attachments contained on a docket folder.
- 1.5. The letters are mostly in English although sometimes they are written in Tagalog.
- 1.6. Around 50 requests are received per week. A high of 300 requests a month is possible.

1.7. Classification of Tax Rulings: As to TYPE

- 1.7.1. Numbered/Commissioner Rulings – Rulings signed by the BIR Commissioner and contain an official reference number.
- 1.7.2. VAT Rulings – Rulings issued by the VAT Committee and approved by the BIR Commissioner, Deputy Commissioner or Assistant Commissioner.
- 1.7.3. ITAD Rulings – Rulings issued by the International Tax Affairs Division and which interpret tax treaties and approved by the BIR Commissioner, Deputy Commissioner or Assistant Commissioner.
- 1.7.4. DA Rulings – ruling issued by BIR officials below the rank of Commissioner but higher than Regional Director. Also known as unnumbered rulings.

1.7.5. Other rulings:

1.7.5.1. S-40 – Tax Free Exchange/Mergers

1.7.5.2. S-30 – Foundations/Non-stock, Non-profit organizations

1.7.5.3. ENPS – Non-stock, non-profit schools

1.7.5.4. ECCP – Cooperatives

1.7.5.5. S-20 – Socialized Housing/Community Mortgage Programs

1.7.5.6. PCNC – Donee institutions

1.7.5.7. Retirement Rulings – this is easily the most numerous type of rulings in terms of number issued.

1.8. Classification of Tax Rulings: As to Precedence

1.8.1. Rulings of First Impression – no precedents, new issues, fresh, can only be signed/ issued by the Commissioner.

1.8.2. Rulings with Precedents – these are rulings the subject matter of which have been covered by rulings of first impression issued earlier.

2. Step 2 – Receipt of Request at the BIR

2.1. The unit at BIR that receives the request is the Law Division. Some requests are filed directly with the Office of the BIR Commissioner or the Office of the Legal Service. When this happens, the letter requests are later on forwarded to the Law Division.

2.2. The Receiving Clerk of the Law Division receives the letters and logs the details in the Law Division logbook. For easy tracking later on, the receiving clerk assigns a LOCATOR Number (e.g. K1- 001 –2006 or the First request of Ruling Type K1 for the year 2006). K1 is an example of an office code number assigned for a particular type of ruling.

2.3. The receiving clerk then forwards the letter and all attachments to the Law Division Chief.

3. Step 3 – Assignment to an Action Attorney

- 3.1. The Division Chief reviews the request then assigns the case to one of the eleven (11) Action Attorneys in the Law Division. The Assistant Division Chief can also assign the case on behalf of the Division Chief.
- 3.2. The Division Chief considers load balancing as a factor in assignment of cases to an Action Attorney. Action Attorneys must carry more or less the same load (as they work on more than one case at any given time). In some cases the Division Chief asks for a report on current cases assigned to the Action Attorneys.
 - 3.2.1. The requests can be classified into three (3) categories according to level of difficulty:
 - Easy
 - Medium
 - Difficult
 - 3.2.2. The level of difficulty of cases already assigned to an Action Attorney is also considered during assignment. Hence, an Action Attorney might be working on a few difficult cases while another is working on numerous but easy assignments.
- 3.3. The skills set is also used by the Division Chief as a factor in determining case assignments. Some Action Attorneys have developed expertise in certain areas. The types of cases are as follows:
 - 3.3.1. Income Tax
 - 3.3.2. VAT
 - 3.3.3. Excise Tax
 - 3.3.4. DST
 - 3.3.5. Withholding tax
 - 3.3.6. Special Laws (e.g. PEZA)
 - 3.3.7. Incentives
 - 3.3.8. Corporate Organizations/Re-organizations

3.3.9. Donations

3.3.10. Retirement

3.3.11. Others

3.4. The assignment (as to who will work on the case) is indicated (handwritten) on the letter request by the Division Chief.

3.5. The Division Chief sends the request back to the Receiving Clerk for recording.

4. STEP 4 – Receiving Clerk Records the Assignment

4.1. The receiving clerk records the assignment into a logbook.

4.1.1. The receiving Clerk maintains a separate logbook for each Action Attorney.

4.1.2. The Receiving Clerk forwards the case to the Action Attorney

5. STEP 5 - Action Attorney Works on the Case

5.1. The Action Attorney receives the case from the receiving clerk. The Action Attorney makes sure that the request does not cover a no-ruling area.

5.2. No-Ruling areas refer to cases where rulings need not be issued as in instances where the case is fictitious, hypothetical or there is a pending investigation/assessment. Reference is revenue bulletin RB # 1-2003

5.3. The Action Attorney checks if previous rulings about the same subject exist.

5.3.1. The Action Attorney accesses the Lex Libris/ Access Law (C.A.T.S.) in CD ROM Format or printed copies of previous rulings.

5.3.2. The Action Attorney captures the reference number of the precedent(s) in a boxed portion of the reply/ruling.

5.4. The Action Attorney reviews all materials that could serve as legal basis for his recommendation. The following are typically used as reference materials by the Action Attorney:

5.4.1. Tax Code (Internal Revenue Code)

5.4.2. Revenue Issuances

- 5.4.2.1. Revenue Regulations (RR)
- 5.4.2.2. Revenue memorandum Circulars (RMC)
- 5.4.2.3. Revenue Memorandum Orders (RMO)
- 5.4.2.4. Revenue Delegated Authority Orders (RDAO)
- 5.4.2.5. Revenue Bulletins (RB)
- 5.4.3. Special Laws, e.g. Republic Act, Executive Orders, Presidential Decrees
- 5.4.4. Civil Code of the Philippines
- 5.4.5. Law of Federal Income Taxation
- 5.4.6. Supreme Court Decisions
- 5.4.7. Court decisions (Supreme Court, Court of Appeals, etc)
- 5.4.8. US Jurisprudence (e.g. MERTENS)
- 5.5. After reviewing all the related and relevant legal bases, the Action Attorney drafts the ruling.
- 5.6. The standard parts of the ruling are as follows:
 - 5.6.1. 1st paragraph – Referencing the Request
 - 5.6.2. 2nd Paragraph – Narration of Facts and Discussion
 - 5.6.3. 3Rd Paragraph – Reply/Dispositive Portion
- 5.7. A standard format and wording for some rulings may be used but not for all types of cases. The Law Division currently uses pro-forma rulings for Retirement and Socialized Housing. Other types of rulings require non-standard formats or wordings.
- 5.8. After the draft ruling is complete, the Action Attorney submits his work to his Section Chief for review

6. STEP 6 – Review by the Law Division Section Chief

- 6.1. There are currently two (2) Section Chiefs in the Law Division. Any one of the two may perform the review.
- 6.2. The Section Chief reviews the work of the Action Attorney.
 - 6.2.1. If with corrections, the draft is sent back to the Action Attorney for rework.
 - 6.2.2. If OK, the Section Chief puts his initials on the draft ruling.
- 6.3. The draft ruling goes to the Assistant Division Chief.

7. STEP 7 – Review by the Assistant Division Chief

- 7.1. The Assistant Division Chief reviews the draft which came from the Section Chief.
 - 7.1.1. If with corrections, the draft is sent back to the Action Attorney for rework (re-study/redraft). The Assistant Division Chief may also call the Action Attorney to explain the draft. An example of a redraft is when the Action Attorney failed to find a previous ruling that the Assistant Division Chief remembers.
 - 7.1.2. If OK, the Assistant Division Chief initials the draft.
- 7.2. The draft ruling goes to the Law Division Chief.
 - 7.2.1. If with corrections, the draft is sent back to the Action Attorney for rework.
 - 7.2.2. If OK, the Division Chief initials the draft.
- 7.3. The draft Ruling goes to the Releasing Clerk.

8. STEP 8 – Recording and Release by the Law Division Releasing Clerk

- 8.1. Releasing Clerk records the outgoing ruling.
- 8.2. Releasing Clerk forwards the ruling to the Office of the Assistant Commissioner for Legal Service

Figure 1 below shows the process flow within the Law Division (Steps 1 to 8):

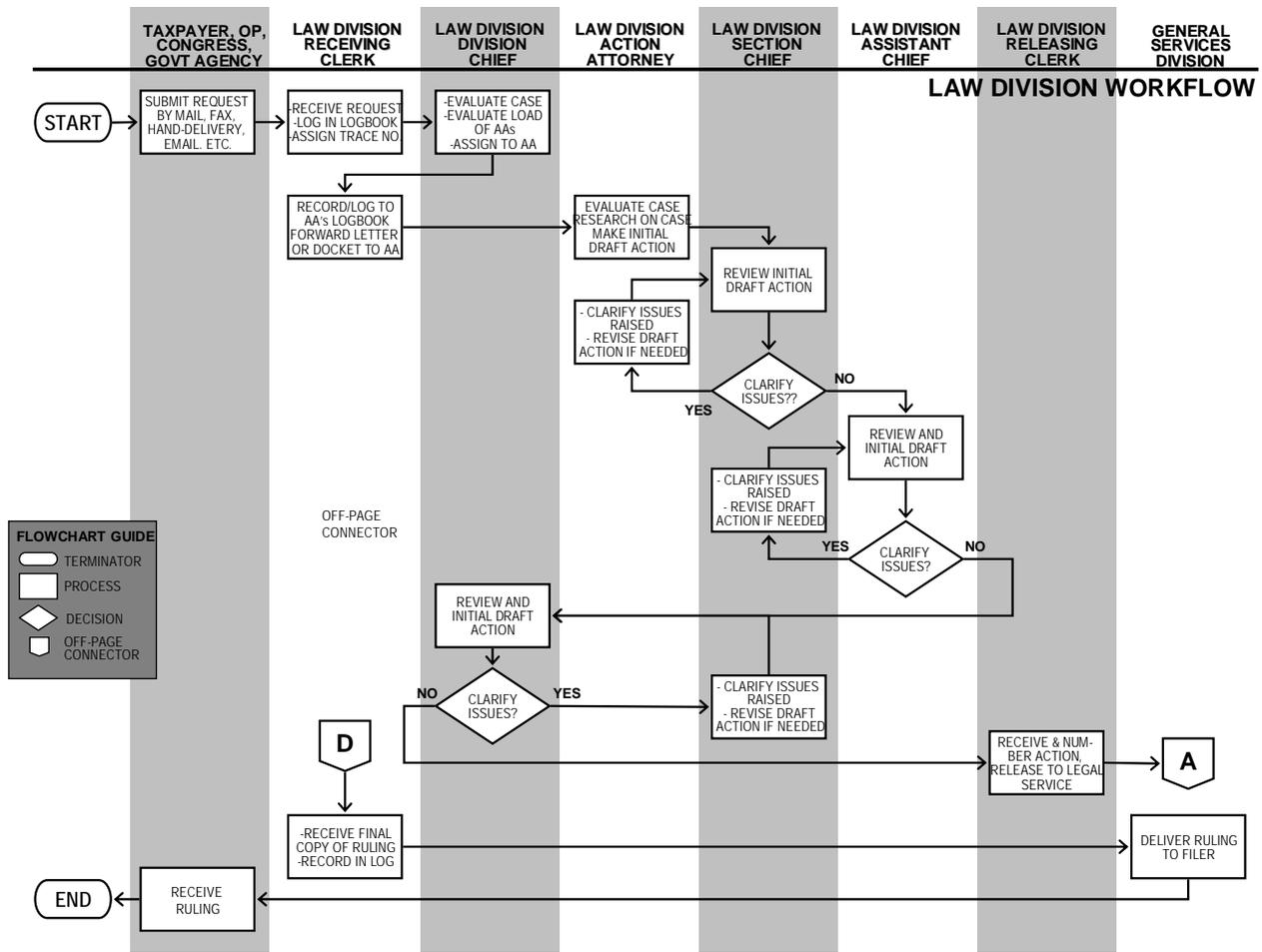


Figure 1: Process Map – Tax Ruling Process at the BIR Law Division

9. STEP 9 – Review at the Office of the Assistant Commissioner for Legal Service

- 9.1. Receiving Clerk at the Legal Service logs the receipt of the ruling and assigns a number.
- 9.2. Receiving Clerk forwards the ruling to the Head, Revenue Executive Assistant for review.

- 9.3. The Head, Revenue Executive Assistant reviews the case. If with corrections, the ruling goes back to the Action Attorney of the Law Division. If OK, he initials the ruling and then the ruling goes to the Technical Assistant, Legal Service for review.
- 9.4. The Technical Assistant reviews the ruling. If with corrections, the ruling goes back to the Action Attorney of the Law Division. If OK, the Technical Assistant initials the ruling and sends the ruling to the Assistant Commissioner for signing.
- 9.5. The Assistant Commissioner determines if the case is about a matter that he can sign at his level.
 - 9.5.1. If the Assistant Commissioner can sign, he signs the ruling and sends the ruling back to the Law Division Receiving Clerk for numbering and release.
 - 9.5.2. If the Assistant Commissioner is not authorized to sign, the Assistant Commissioner counter initials the ruling and forwards it to the Deputy Commissioner for Legal and Inspections for review.
- 9.6. Figure 2 (next page) shows the process at the Legal Service Office:

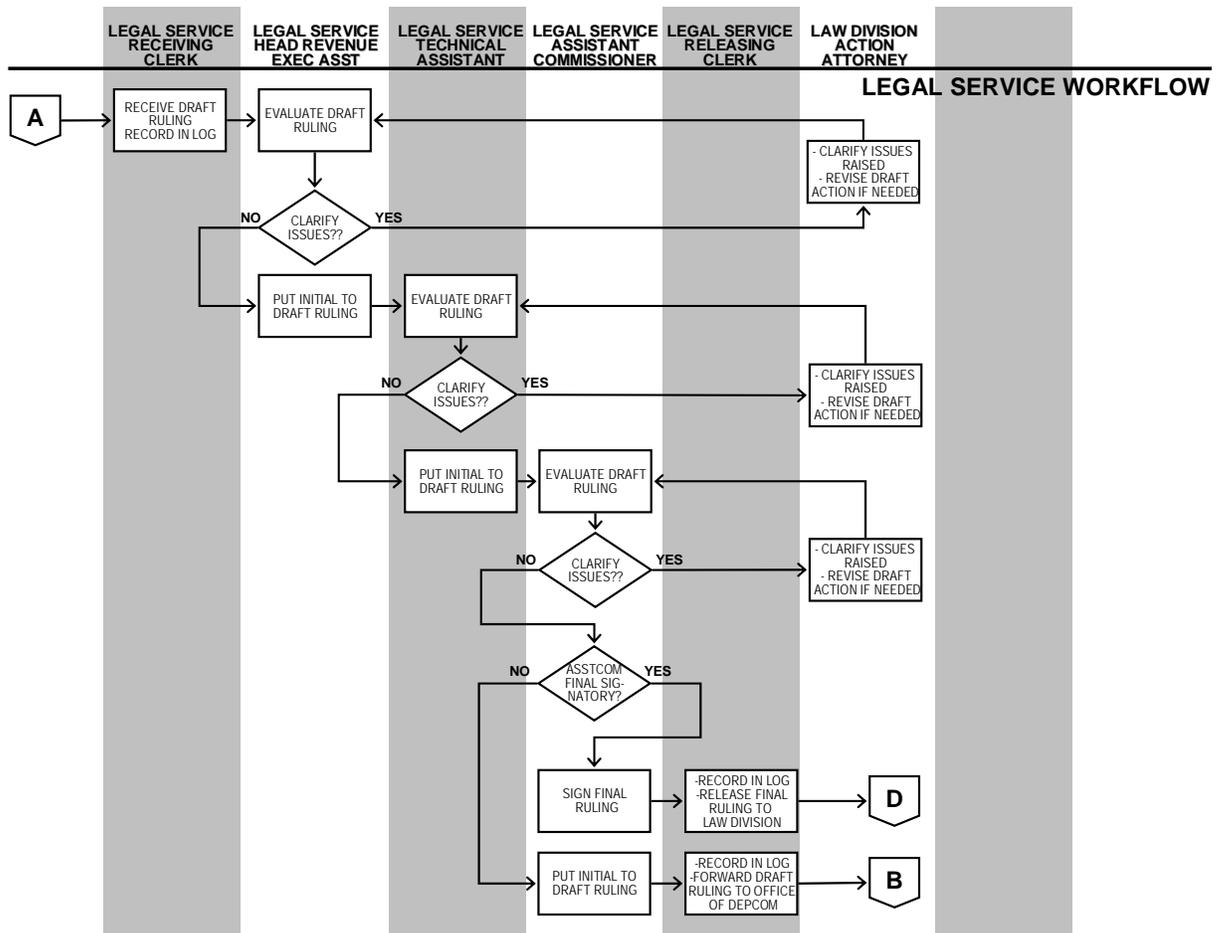


Figure 2 – BIR Tax Ruling Process - Legal Service Office Portion

10. Step 10 - Review at the Office of the Deputy Commissioner, Legal and Inspections.

- 10.1. Receiving Clerk at the Office of the Deputy Commissioner records the receipt of the ruling and assigns a number.
- 10.2. Receiving Clerk forwards the ruling to the Chief of Staff for assignment to the Technical Assistant.
- 10.3. Receiving Clerk forwards the ruling to the Technical Assistant for review.

- 10.4. The Technical Assistant reviews the ruling. If with corrections, the ruling goes back to the Action Attorney of the Law Division. If OK, the Technical Assistant initials the ruling and sends the ruling to the Chief of Staff for review.
- 10.5. The Chief of Staff reviews the ruling. If with corrections, the ruling goes back to the Action Attorney of the Law Division. If OK, the Chief of Staff initials the ruling and sends the ruling to the Deputy Commissioner for signing.
- 10.6. The Deputy Commissioner determines if the case is about a matter that he can sign at his level.
- 10.6.1. If the Deputy Commissioner can sign, he signs the ruling and sends the ruling back to the Law Division Receiving Clerk for numbering and release.
- 10.6.2. If he cannot sign, the Deputy Commissioner counter initials the ruling and forwards it to the Commissioner for signing.
- 10.7. Figure 3 below shows the process flow at the Deputy Commissioner's Office:

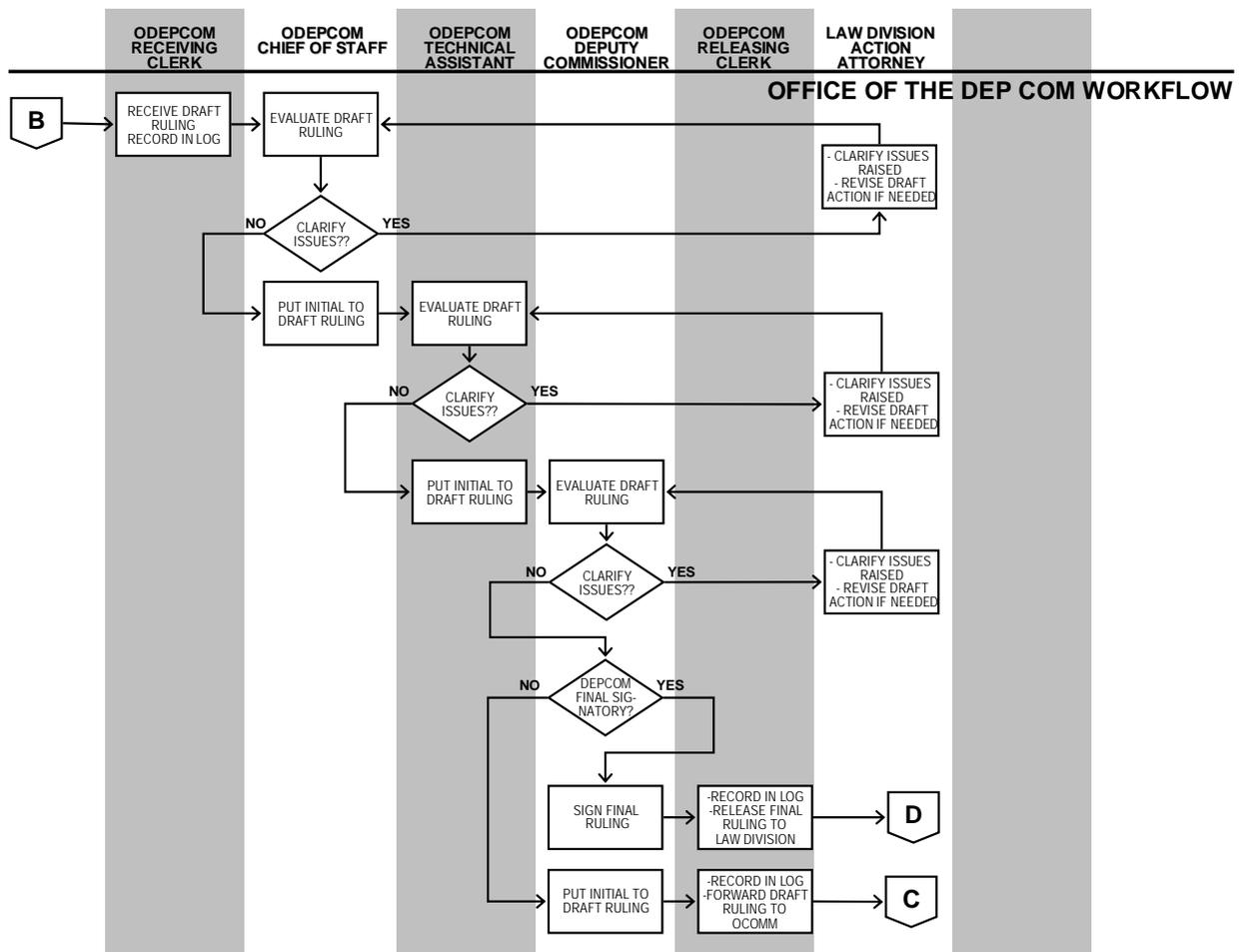


Figure 3 – BIR Tax Ruling Process – Deputy Commissioner’s Office Portion

11. STEP 11 – Review at the Commissioner’s Office

- 11.1. Receiving Clerk at the Office of the Commissioner records the receipt of the ruling and assigns a number.
- 11.2. Receiving Clerk forwards the ruling to the Chief of Staff for assignment to the Technical Assistant.
- 11.3. Receiving Clerk forwards the ruling to the Technical Assistant for review.
- 11.4. The Technical Assistant reviews the ruling. If with corrections, the ruling goes back to the Action Attorney of the Law Division. If OK, the Technical Assistant initials the ruling and sends the ruling to the Chief of Staff for review.

11.5. The Chief of Staff reviews the ruling. If with corrections, the ruling goes back to the Action Attorney of the Law Division. If OK, the Chief of Staff initials the ruling and sends the ruling to the Commissioner for signing.

11.6. The Commissioner signs the ruling and sends it back to the Law Division for numbering and release.

Notes: A DA ruling typically contains 7 signatures; one final signatory and 6 initials if to be signed by the Assistant Commissioner, Legal Service. It will contain 10 signatures (one final and 9 initials) if it is to be signed by the Deputy Commissioner, Legal and Inspections Group. A numbered ruling can contain as many as 10 signatures including the final signature of the BIR Commissioner: A sample ruling contains the initials of the following employees / units:

11.6.1. Chief of Staff

11.6.2. CIR Reviewer

11.6.3. DCIR

11.6.4. DCIR Reviewer

11.6.5. JHR

11.6.6. CSB

11.6.7. PMB

11.6.8. HAP

11.6.9. MMC

11.7. Figure 4 shows the process flow at the Commissioner's Office:

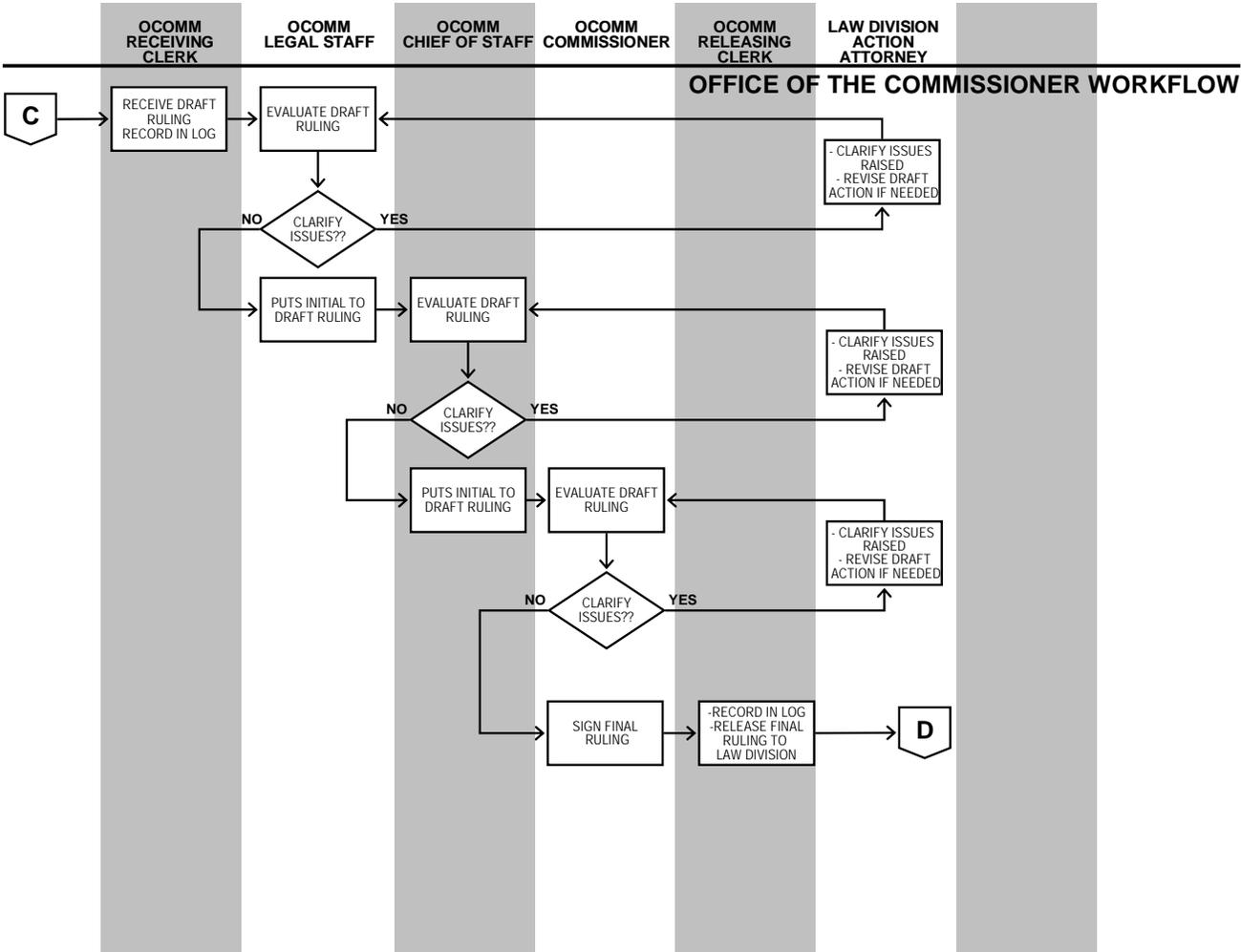


Figure 4 – BIR Tax Ruling Process –Commissioner’s Office Portion

12. STEP 12 – Back to the Law Division Receiving Section for Numbering

- 12.1. The receiving clerk of the Law Division receives the signed ruling.
- 12.2. The receiving clerk assigns a number to the ruling following the format below:
 - 12.2.1. Format of Numbering System for Numbered Rulings:

12.2.1.1. Referenced Law – Sections of the Revenue Code or any other law that is contained/ referenced in the ruling. [e.g. Sec 100 (B) (7)]

12.2.1.2. Reference Number – contains a 3-digit sequence number followed by the year (e.g. 003-2006 means this is the third ruling issued in the year 2006)

12.2.1.3. Date issued using the format MM-DD-YYYY

12.2.2. Format of Numbering System used for Unnumbered Rulings

12.2.2.1. Example:

57B
DA-060-2002;DA-300-2003
DA-090-2004
03-01-2004

12.2.2.2. The unnumbered ruling in the above example refers to Section 57-B of the Revenue Code. The precedents are DA-060-2002 and DA-300-2003. It was given the reference number DA-090-2004 (which means that it is the 90th unnumbered ruling issued in year 2004. It was issued on March 01, 2004.

13. STEP 13 - Releasing

13.1. The Law Division Releasing Clerk receives the numbered ruling.

13.2. The Releasing Clerk informs the Taxpayer/Requestor that the ruling is ready for pick-up.

13.3. If the ruling is for mailing, the releasing clerk forwards the ruling to the General Services Division for mailing.

13.4. The Taxpayer receives the ruling.

14. STEP 14 – Monthly Reporting

14.1. At the end of each month, the Law Division prepares a Monthly Accomplishment Report.

14.2. The report contains statistics on the number of Rulings Planned vs. Actual Number Released.

14.3. Below is a sample report for August 2006. In August 2006, the plan was to draft 110 rulings. The actual number released was 182 Rulings.

ACCOMPLISHMENT REPORT
Of The
LAW DIVISION
For the month of AUGUST, 2006

FUNCTIONS/ACTIVITIES	PLANNED	ACTUAL	REMARKS
I. Drafting of Rulings			
(a) Rulings of first impression	10	2	<i>Depends on the request filed</i>
(b) Rulings with precedents	100	180	
II. Drafting of recommendation of the following:			
(a) Cases referred by various divisions	5	18	
(b) For approval of Private Retirement Plans	15	23	
(c) Regulations	1	--	
(d) Subscription of TPI and processing Informer's Reward	10	31	
III. Issuance of Certificate of Registrations of qualified Donee Institution	10	15	
IV. Other Matters:			
(1) Interagency meetings (i.e., DOF, BOLI, DTI), meetings with NGO's, GOCC's and/or taxpayers re: taxpayer's assistance (i.e., PCNC, TAPI, NDC, HIGC, etc.)	2	17	
(2) Committee membership meetings (i.e., Bidding Committee, VATCOM, etc.)	4	8	
(3) Phone queries/day	25	20	
(4) Walk-in queries/day	15	15	

Respectfully Submitted:


MAPEMAROMA M. CANTILLEP
 Asst. Chief, Law Division
C 999



K-1-CBB
Report on accomplishment reports

Figure 5 – Sample Monthly Report

14.4. The monthly report also tracks number of phone queries and walk-in queries per day.

14.5. Statistics for the period 1998 to 2002 for some types of rulings:

Category of Ruling	1998	1999	2000	2001	2002	Total	Yearly Average
1. Numbered	179	213	75	59	41	567	113
2. VAT Rulings	65	121	60	86	88	420	84
3. ITAD Rulings	0	54	201	112	215	582	116
4. DA Rulings	564	728	454	268	256	2270	454
Total	808	1116	790	525	600	3839	764

14.6. For other types of rulings, here are the numbers released for one typical year (year 2005):

14.6.1. ENPS = 12

14.6.2. S-30 = 48

14.6.3. S-40 (mergers) = 26

14.6.4. S-20 = 27

14.7. Latest statistics:

14.7.1. Unnumbered Rulings

14.7.1.1. 2003 – 524 Rulings

14.7.1.2. 2004 – 449 Rulings

14.7.2. Numbered Rulings

- 2000 - 75
- 2001 – 59
- 2002 – 41
- 2003 – 19
- 2004 – 21
- 2005 – 24

PART II - DESCRIPTION OF THE CURRENT TAX RULING PROCESS FLOW AT THE REGIONAL OFFICES

NOTE: Legal Divisions from three key Regional Revenue Offices (i.e., Baguio, Cebu, and Davao) were interviewed for this diagnostic exercise. The rulings process from these three Regional Offices were found to be generally the same except for minor differences which are noted accordingly.

1. Step 1 - A request for tax ruling is filed

- 1.1. The request for ruling may be filed by a taxpayer (individual/corporation) or his representative, and law/accounting firms within the jurisdiction of the revenue region. Other divisions or units within the BIR revenue region also submit requests for rulings or opinions, usually in support of or to clarify revenue operations and assessment issues. These will be henceforth referred to as 'Requestor'.
- 1.2. The Filer, if a taxpayer, submits a formal letter of request either to an Examiner in the District Office, or directly to the Regional Office's legal Division. These letters are usually hand-carried by the Requestor, but some are mailed. In case the Requestor is within the BIR organization, a formal letter of request or a memorandum is submitted to the Legal Division.
- 1.3. Examiners are tasked to perform some investigative work pertaining to the request, mainly to validate the documents and/or information submitted by the Requestor.
- 1.4. Once this investigation is completed, the Examiner then forwards the request to the Legal Division. The frequency of forwarding the requests depends on the proximity of the District Office to the Regional Office – nearby District Offices may forward each request as soon as investigation is completed (e.g., the Davao City DO). District Offices far from the Regional Office usually batch the requests and send these to the Regional Office either weekly or monthly via courier.

2. Step 2 – Receipt of Request at the BIR

- 2.1. The Receiving Clerk receives the forwarded requests. The Receiving Clerk logs or records the request. In all three Regional Offices interviewed, the Receiving Clerk is also the Releasing Clerk.
- 2.2. The Legal Officer, who may be the Legal Division Chief or Assistant Chief, evaluates each request. If supporting documents or information are lacking, or require further clarification, the request is returned to the RDO Examiner to gather further information or clarification about the request, as in the case of Baguio and Davao Regional Offices.
- 2.3. The Legal Officer also evaluates if the request is with precedent or one that can be processed within the Regional Offices. Requests that fall under first impression category will be forwarded to National Office's Law Division. For the three Regional Offices interviewed, the number of requests may be as low as five (5) per month (for Baguio), to as high as 25-30 per month (for Cebu).

3. Step 3 – Assignment to an Action Attorney

- 3.1. The Legal Officer then assigns the request to an Action Attorney. The three Regional Offices interviewed uniformly have five people handling requests, and this headcount already includes the Legal Division Chief and Assistant Chief.
 - 3.1.1. There are normally three (3) Action Attorneys in a Regional Office. An exception is Baguio where Legal Assistants/Paralegals are asked to assist in drafting the Rulings due to lack of lawyers.
- 3.2. The Legal Officer typically divides assignment of request to the Acting Attorneys based on their current load. In many cases, the Legal Division Chief and Assistant Chief also act as Action Attorneys themselves, mainly due to the fact that all three Legal Divisions interviewed are under-staffed. It must be noted that Action Attorneys also handle prosecution and other functions over and above the rulings.

4. STEP 4 - Action Attorney Works on the Case

- 4.1. The Action Attorney receives the request and supporting documents from the receiving clerk and evaluates it. The Action Attorney makes sure that the request does not cover a no-ruling area, or that the request is not a first impression.
- 4.2. The Action Attorney conducts research if previous rulings about the same subject exist.
 - 4.2.1. The Action Attorney accesses either or both the Lex Libris/ Access Law (C.A.T.S.) in CD ROM Format or printed copies of previous rulings. In all cases, the version of the Lex Libris is outdated, with the latest version (in Davao) being v2003.
 - 4.2.2. The Action Attorney captures the reference number of the precedent(s) in a boxed portion of the reply/ruling.
- 4.3. The Action Attorney reviews other materials that could serve as legal basis for his recommendation. Further research will include reference to published laws and standards, as well as BIR issuances. The following are materials Action Attorneys may use as reference, although in many regional offices, not all of these are available.
 - 4.3.1. Tax Code (Internal Revenue Code)
 - 4.3.2. Revenue Issuances
 - 4.3.2.1. Revenue Regulations (RR)
 - 4.3.2.2. Revenue memorandum Circulars (RMC)
 - 4.3.2.3. Revenue Memorandum Orders (RMO)
 - 4.3.2.4. Revenue Delegated Authority Orders (RDAO)
 - 4.3.2.5. Revenue Bulletins (RB)
 - 4.3.3. Special Laws, e.g. Republic Act, Executive Orders, Presidential Decrees
 - 4.3.4. Civil Code of the Philippines
 - 4.3.5. Law of Federal Income Taxation
 - 4.3.6. Supreme Court Decisions
 - 4.3.7. Court decisions (Supreme Court, Court of Appeals, etc)

4.3.8. US Jurisprudence (e.g. MERTENS)

4.4. After reviewing all the related and relevant legal bases, the Action Attorney drafts the ruling.

4.5. The standard parts of the ruling are as follows:

4.5.1. 1st paragraph – Referencing the Request

4.5.2. 2nd Paragraph – Narration of Facts and Discussion

4.5.3. 3Rd Paragraph – Reply/Dispositive Portion

4.6. After the draft ruling is complete, the Action Attorney submits his work to his Section Chief for review.

Figure 6 below shows the process flow within the Legal Division (Steps 1 to 4):

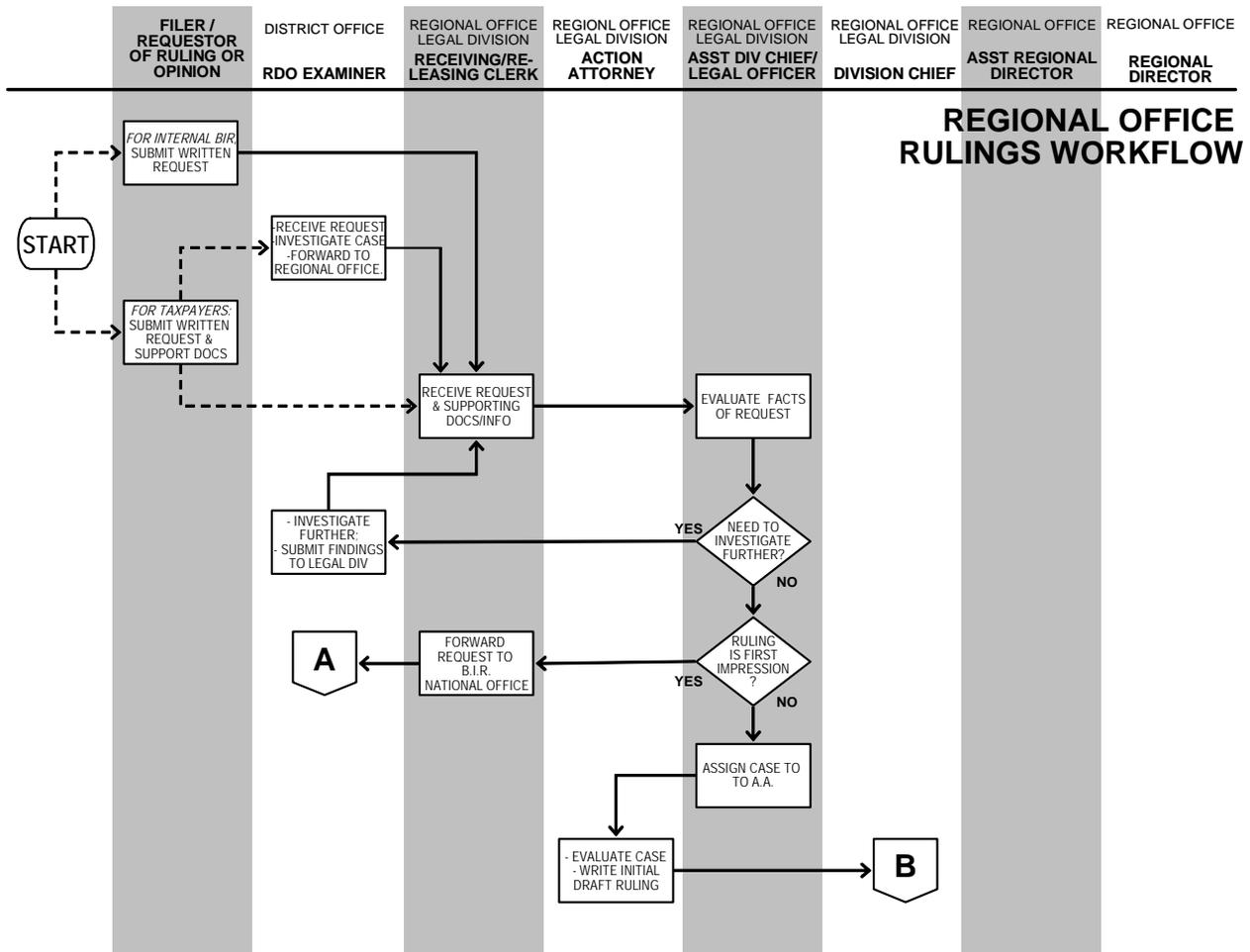


Figure 6 – Regional Office Rulings Process Flow (Part 1)

5. STEP 5 – Review by within the Legal Division

5.1. The draft coming from the Action Attorney is first reviewed by the Assistant Division Chief.

5.1.1. In case where there are corrections, clarifications, or if a total re-write is needed, the draft ruling is sent back to the Action Attorney for revision or re-work.

5.1.2. If the Assistant Division Chief concurs with the draft, he puts his initials as approval.

5.1.3. The draft ruling is forwarded to the Legal Division Chief.

5.2. The draft ruling is reviewed by the Legal Division Chief for a second time.

5.2.1. In case where there are corrections, clarifications, or if a total re-write is needed, the draft ruling is sent back to the Action Attorney for revision or re-work.

5.2.2. If the Legal Division Chief concurs with the draft, he puts his initials as approval.

5.2.3. The draft ruling is forwarded to the Assistant Regional Director.

6. STEP 6 – Review by the Assistance Regional Director

6.1. A third review is performed by the Assistant Regional Director. As in the case of the previous reviews, the following procedure is followed:

6.1.1. If with corrections, the draft is sent back to the Action Attorney for rework. The Assistant Regional Director may also call the Action Attorney to explain the draft. An example of a redraft is when the Action Attorney failed to find a previous ruling that the Assistant Regional Director may be aware of.

6.1.2. If the Assistant Regional Director concurs with the draft, he puts his initials as approval. The draft ruling goes to the Regional Director for final approval.

7. STEP 7 – Review by the Regional Director

7.1. A final review is performed by the Regional Director.

7.1.1. The Regional Director may at this point still confer with the Action Attorney and the other approving officers, although normally the draft ruling at this point has already been well-studied.

7.2. The Regional Director signs the ruling to make it official.

7.3. The draft Ruling is forwarded to the Releasing Clerk.

8. STEP 8 – Recording and Release by the Legal Division Releasing Clerk

- 8.1. The Releasing Clerk records the official ruling in the division logbook.
- 8.2. The Releasing Clerk forwards the official ruling to the Requestor (either by mailing it, or by calling the Requestor by phone to pick up the official ruling). Another copy is kept within the Legal Division for filing.

Figure 7 below shows the process flow within the Legal Division (Steps 5 to 8):

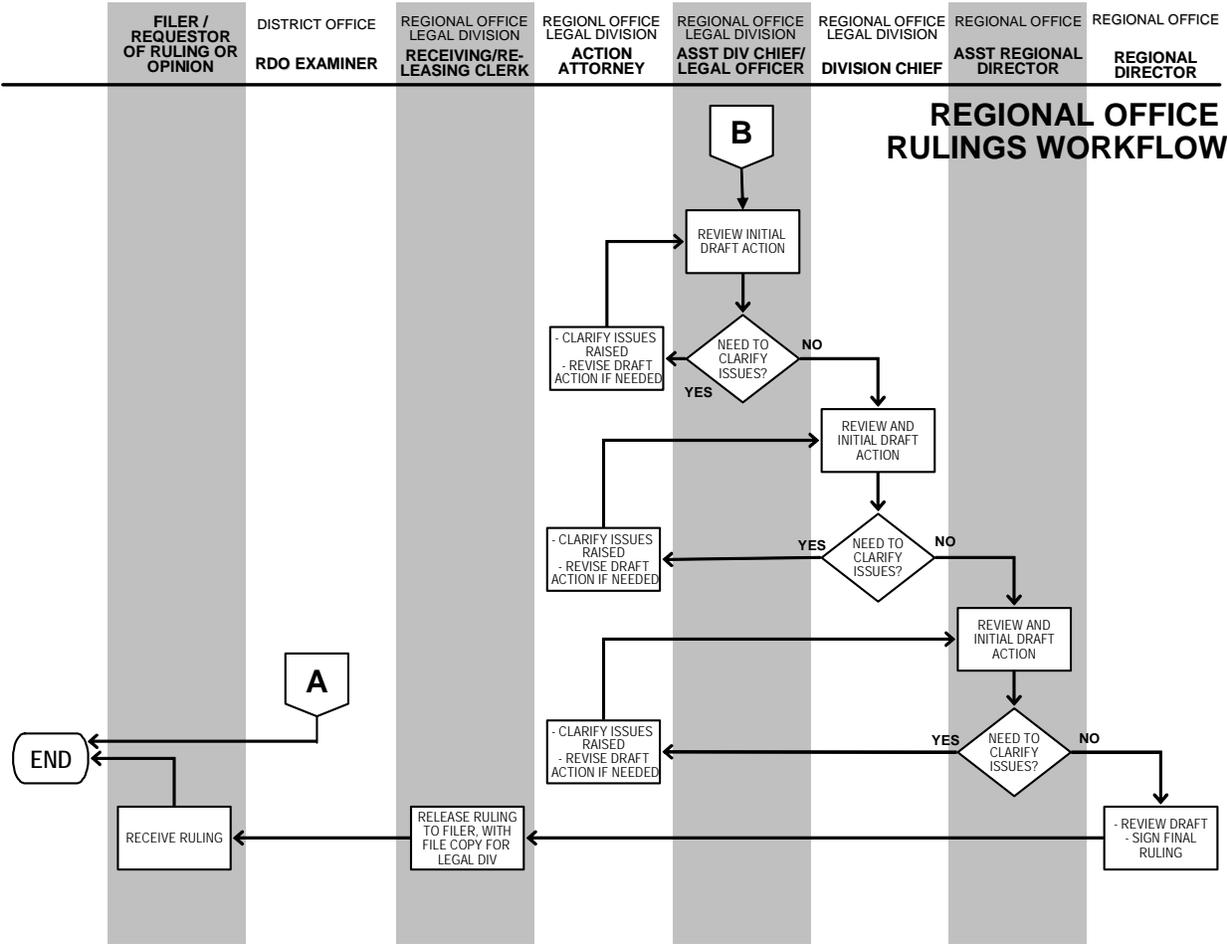
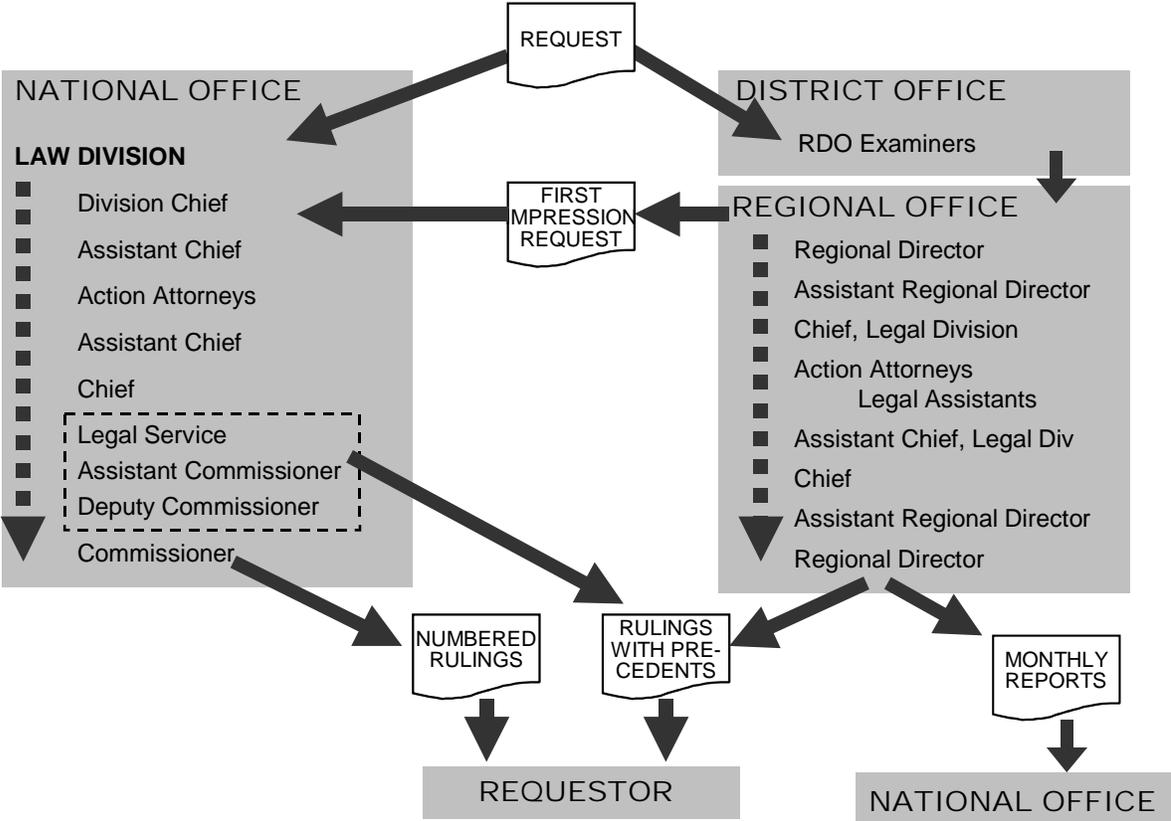


Figure 7 – Regional Office Rulings Process Flow (Part 2)

Below is a general view of the tax ruling issuance process either at the BIR National Office or at the Regional offices:

BIR TAX RULING SYSTEM: How Rulings are Drafted

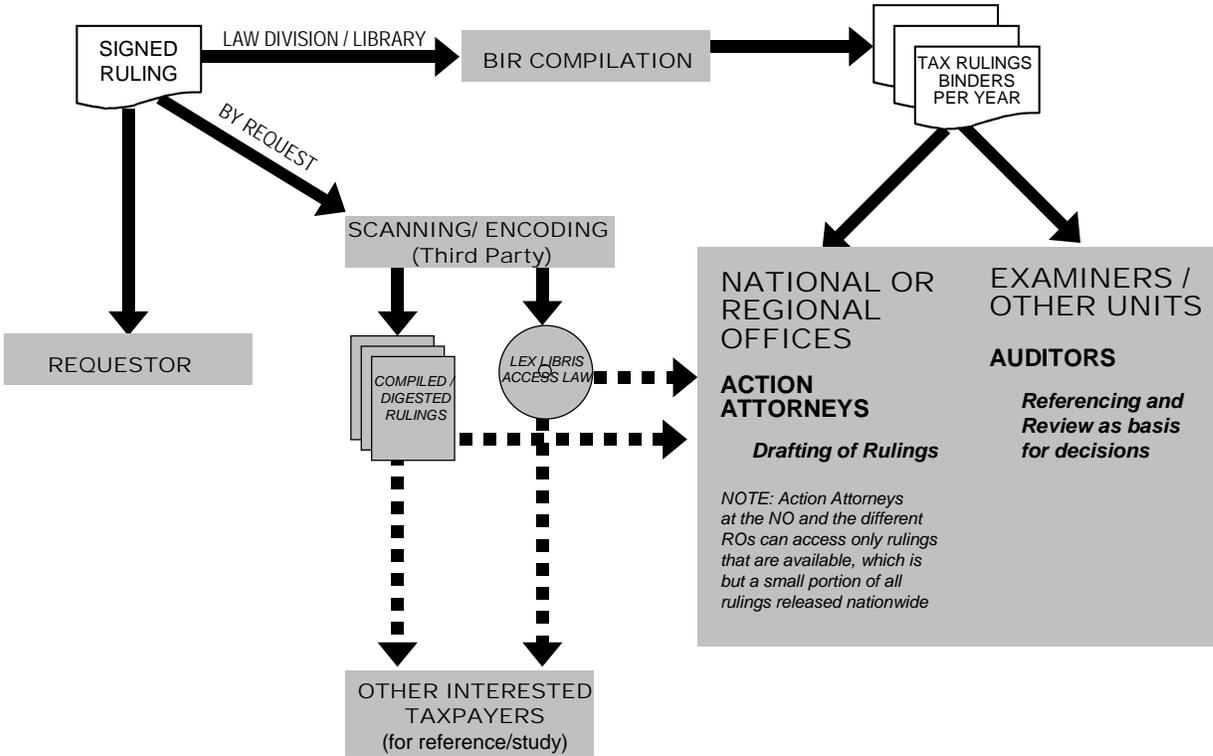


PART III – HOW PREVIOUS TAX RULINGS ARE ACCESSED

1. After a copy of the signed ruling is given to the requesting party, another copy is filed by the Law Division at the National Office. If the Ruling was prepared by the Regional Office, the Regional Office keeps the file copy.
2. At end of each year, copies of all the rulings issued during the year are compiled and placed in the Library, Law Division. Regional Offices also keep a compilation (hard copies) of all rulings released by the Office.
3. From time to time, interested third parties request for copies of the rulings from the Law Division.
4. Some individuals/organizations do a similar compilation of rulings by encoding and indexing the rulings acquired from the BIR. These compilations are either in soft copy format (in CD ROMs e.g. Lex Libris, CATS) or in hard copy soft-bound publications. These are normally sold to the public.
5. The Action Attorneys, either at the National Office or the Regional Offices, access these compilations (soft or hard copies) in the course of drafting new rulings.
6. A few Regional Offices include, as attachments to their monthly report, copies of the rulings they issued during the month. This allows the National Office (Law Division) to monitor previous rulings issued at the Regional Offices.
7. BIR Examiners/Assessment Officers/Audit Personnel also need to access or reference previous rulings from time to time. They use basically the same files/sources available to the Action Attorneys.

8. A general view of how rulings are accessed by various parties is shown below:

BIR TAX RULING SYSTEM: How Rulings are Accessed



PART IV – MEETING NOTES

REGIONAL OFFICE # 2 – BAGUIO CITY

Date of Visit – Oct 3-4, 2006

Persons Interviewed: BIR Regional Director Atty Norberto Vitug

Legal Division Chief Atty. Johannes Job Fabella

BAGUIO REGIONAL OFFICE - LEGAL DIVISION ORG STRUCTURE

Regional Director : Atty. Norberto Vitug

Legal Division OIC Chief : Atty Johannes Job Fabella, CPA

Legal Division OIC Assistant Chief: Atty Robert Panopio

Action Attorneys: Melita Gutierrez, Dolores Nabunat, Philip Basat

Computer Operator: Evangeline Panglao, Charito Ranola

Stenographer/Reporter: Avelina Ursua

1. The Baguio Regional office covers the following districts:
 - a. RD#7 Bangued, Abra
 - b. RD#8 Baguio
 - c. RD#9 Trinidad
 - d. RD#10 Bontoc, Mountain Province
 - e. RD#11 Taboc, Kalinga
 - f. RD#12 Lagawe, Ifugao
2. The Baguio office submits copies of the rulings it issued during the month as part of the monthly report to the National office.
3. The Baguio Regional Office uses an expired copy of lex libris.

4. The Baguio Regional Office also gave us a copy of their process flow and some issues, problems, and suggestions related to the Tax Ruling Process. These will be presented and discussed in the next report.
5. The tax ruling process flow in the Baguio Regional Office is simpler than the process in the National office.
6. The process flow and a sample ruling issued at the Baguio Regional Office are shown in the figures 8 and 9 below:

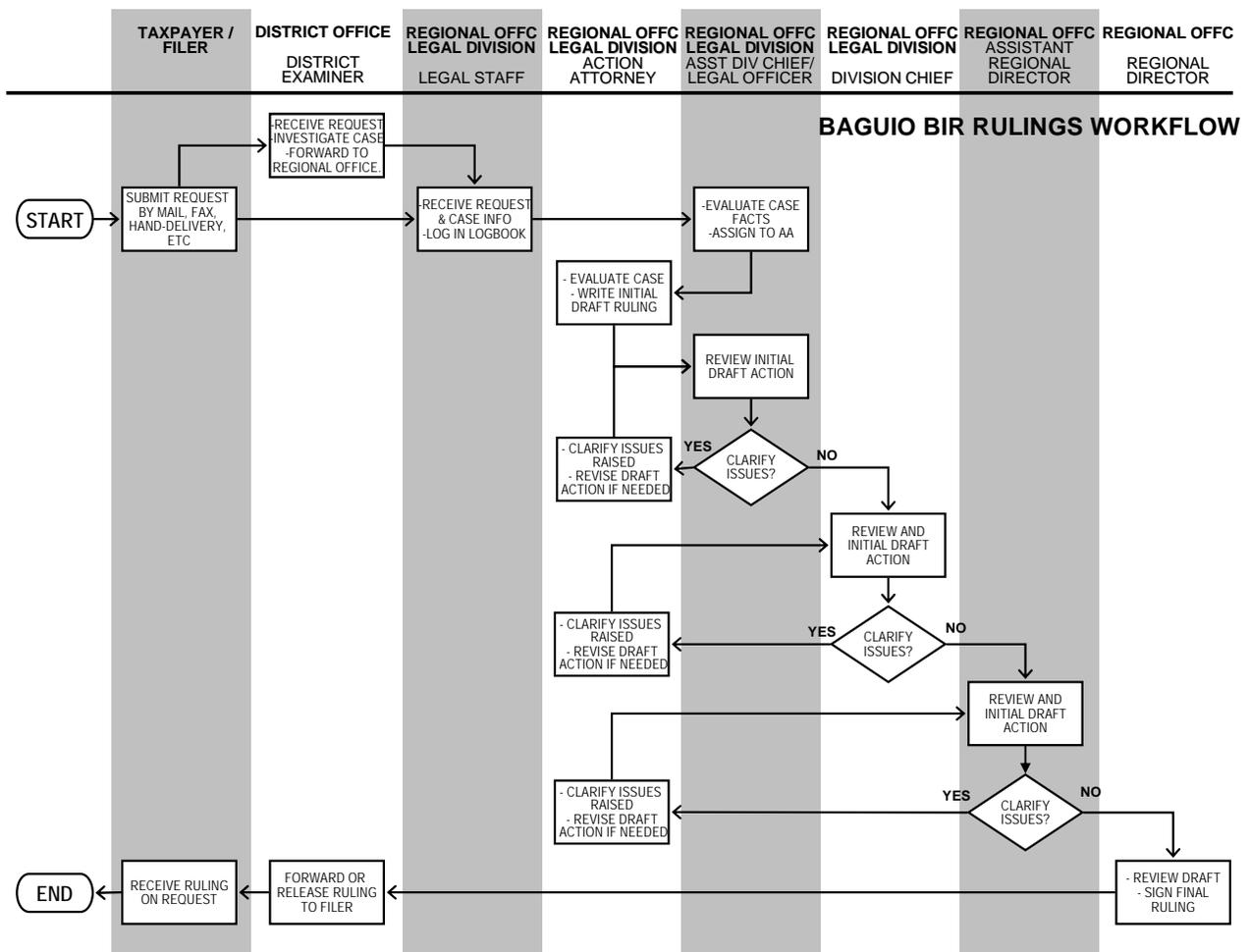
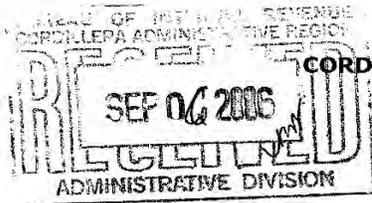


Figure 8 – Tax Ruling Process Flow at the Baguio Regional Office



**CORDILLERA ADMINISTRATIVE REGION
REVENUE REGION NO. 2
69 Leonard Wood Road
Baguio City**

LEGAL DIVISION

RDA-RR No.2 Ruling No. ³⁴ -2006
Date Issued: ^{September 08} , 2006
BIR Ruling No. 4-90
Date Issued: January 12, 1990

**Mr. CAMPBELL YAMASHITA
President- PTCA**

**Mabini Elementary School Parents-Teachers and Community Association of
Northern Luzon, Inc.**

Mabini Elementary School
Salud Mitra Subdivision, Baguio City

S I R:

This refers to your application in behalf of the **Mabini Elementary School Parents-Teachers and Community Association of Northern Luzon, INC.**, for a **Certificate of Tax Exemption** under Section 30 of the 1997 Tax Code, as amended.

Documents submitted to this Office disclosed that the Mabini Elementary School Parents-teachers and Community Association of Northern Luzon, Inc., is a non-stock, non-profit corporation registered with the Securities and Exchange Commission (SEC) on November 25, 2005 under S.E.C. Company Registration No. CN200530479, and the primary purpose for which the said corporation was organized is to promote a better closer Parents-Teachers and Community understanding, unity cooperation and mutual help/ assistance including but not limited to the enhancement of the social, educational, economic and general well being of the members and the future of their children.

Based on the foregoing facts, this Office is of the opinion and holds that the Mabini Elementary School Parents-Teachers and Community Association of Northern Luzon, Inc., falls within the purview of a corporation organized and operated exclusively for the promotion of social welfare purposes as contemplated under **Section 30 (G) of the 1997 Tax Code, as amended**, which exempts from tax on corporations, "Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare". **However, the last paragraph of Sec. 30 provides, "Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income shall be subject to tax imposed under this Code."** (underscoring supplied)

Further, as a corporation organized and operated for the exclusive promotion of social welfare purposes, donations in favor of your corporation are exempt from the payment of donor's tax, pursuant to Section 101 (A) (3) of the said Code subject to the condition that not more than thirty percent (30%) of the said gifts shall be used by the donee for administration purposes. However, this exemption is further subject to compliance of the requirements prescribed under Revenue Regulations No. 13-98 in relation to Section 34 (H) of the same Code.

Figure 9A Sample Ruling Issued by the Baguio Regional Office (Page 1)

Furthermore, your interest from currency bank deposits and yield or other monetary benefit from deposit substitutes and from trust funds and similar arrangements, royalties and interest income derived from a depository bank under the expanded foreign currency deposit system shall be subject to 20% and 7.5% final tax, respectively, imposed under Section 27 (D) (1) of the Tax Code of 1997, as amended. You shall also be taxed on capital gains realized on sales or exchanges of properties. You shall also pay the twelve percent (12%) VAT on your purchase of goods and/services because said tax is an indirect tax which can be passed on or shifted as part of the cost of the goods sold/services rendered.

Moreover, your corporation shall be constituted as withholding agent if it acts as an employer and the employees receive compensation income subject to withholding tax, or if it makes income payment to individuals or corporations subject to the expanded withholding tax provided for in Section 57 (A) of the said Code, as amended.

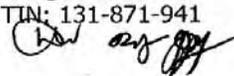
Finally, you are hereby required to file on or before April 15 of each year a profit or loss statement and balance sheet with the Annual Information Return under oath, stating your gross income and expenses incurred during the year and a certificate showing that there has not been any change in your By-Laws, Articles of Incorporation, Manner of Operation and Activities as well as Sources and Disposition of Income. It is requested that a copy of this letter of Exemption be attached to the Annual Information Return which you will file on or before said date.

In view hereof, your request in behalf of the Mabini Elementary School Parents-Teachers and Community Association of Northern Luzon, Inc for the issuance of a Certificate of Tax Exemption is hereby granted subject however to the above-mentioned limitations and conditions.

This ruling is being issued on the basis of the foregoing facts as represented. However, if it will be disclosed upon investigation that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

NORBERTO D. VITUG
Regional Director
TIN: 131-871-941



RR2-3
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REGIONAL OFFICE # 13 – CEBU CITY

Date of Visit – Oct 9-10, 2006

Persons Interviewed: Regional Director Jaime Santiago

Asst. Regional Director Teresita Dizon

Legal Division Chief Atty. Asuncion Bernades

Assistant Chief Neri Yu

Meeting Notes:

1. Five lawyers are available to act as Action Attorneys in the Cebu Regional Office (The Chief of the Legal Division, his Assistant Chief, and three lawyers under his unit).
2. The Cebu Regional Office has access to the 2005 issue of the Lex Libris and the 2002 copy of the SCRA.
3. The Cebu Legal Division issues an average of 20 rulings a month.
4. The process in Cebu follows substantially the same process as practiced in Baguio with the exception that the investigation phase at the Revenue Districts is not usually done.
7. The Cebu Regional Office also gave us a copy of their process flow and some issues, problems, and suggestions related to the Tax Ruling Process. These will be presented and discussed in the next report.
8. A copy of a sample ruling issued in Cebu is shown below as Figure 10.

- 2 -

(3) All revenues and assets of non-stock, non-profit educational institutions actually, directly and exclusively used for educational purposes shall be exempt from taxes and duties."

Corollary to this, Section 1 of Revenue Memorandum Circular No. 45-95 dated December 11, 1995 also provides as follows, to wit:

"Sec. 1 xxx xxx xxx

2.1 Non-stock, non-profit educational institutions are exempt from taxes on all their revenues and assets used actually, directly and exclusively for educational purposes. They shall, however, be subject to internal revenue taxes on income from trade, business or other activity the conduct of which is not related to the exercise or performance by such educational institution of its educational purpose or function.

2.1.1 To ensure that the exempt interest income from Philippine currency deposits and yield from deposit substitute instruments are used actually, directly, and exclusively for educational purposes, the said educational institutions shall, on annual basis submit to the Revenue District Officer, together with the annual information return and duly audited financial statement, the following:

- a) Certification from their depository banks as to the amount of interest income earned from passive investments not subject to the 20% final withholding tax imposed by Section 24 (B) (1) of the Tax Code of 1997, as amended;
- b) Certification of actual utilization of the said income; and
- c) Board Resolution by the school administration on proposed projects, (i.e. construction and/or improvement of school buildings and facilities; acquisition of equipments, books and the like) to be funded out of money deposited in banks or placed in money markets.

Accordingly, the interest income from Philippine currency bank deposits derived by Salvatorian School Inc. is exempt from the 20% final withholding tax.

However, with respect to the earnings or yield realized from their deposit substitute instruments, (i.e. treasury bills, money market placements, etc.) not being in pursuance of the purpose as an educational institution, are subject to the 20% final withholding tax (BIR Ruling Nos. 180-89 dated 8/24/89 and 130-90 dated 07/04/90).

Figure 10B Sample Ruling Issued by the Cebu Regional Office (Page 2)

- 3 -

Pursuant to Par. 4, Section 4, of Article XIV of the 1987 Constitution, all grants, endowments, donations or contributions used actually, directly and exclusively for educational purposes shall, subject to conditions prescribed by law, be exempt from tax.

Since Salvatorian School Inc. is an educational institution, donations and/or contributions made to the school are exempt from gift tax provided that not more than 30% of said donations/contributions shall be used for administration purposes pursuant to Section 87 (D) of the Tax Code of 1997, as amended.

Moreover, Revenue Regulation 76-2003 dated November 15, 2003 amending certain provision of Revenue Memorandum Circular No. 45-95 provides that the operation of cafeterias/canteens and bookstores are exempt from taxation provided they are owned and operated by the educational institution as ancillary activities and the same are located within the school premises.

Pursuant to Section 109(m) of the tax Code of 1997, private educational institutions shall be exempt from value-added tax provided they are accredited as such either by the Department of Education or by the Commission on Higher Education. However, this exemption does not extend to their other activities involving sale of goods and services.

The exemption does not cover withholding taxes. As an educational institution, you are constituted as withholding agent for the government hence, you are required to withhold the tax on compensation income of your employees, or the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the Tax Code of 1997.

Finally, the institution is subject to the payment of the annual registration fee of P500.00 as prescribed in Section 236(B) of the Tax Code of 1997 and required under Section 6(C) in relation to Section 237 of the same Code to issue duly registered receipts or sales or commercial invoices for each sales or transfer of merchandise or for services rendered which are not directly related to the activities for which you are registered.

This ruling is issued on the basis of the foregoing facts as represented and the documents submitted. However, if upon subsequent and continuous verification the corporation violates any of its purposes and/or any of the requirements imposed in this letter are not complied with, then this ruling considered null and void.

Very truly yours,


JAIME B. SANTIAGO, CESO V
Regional Director

RR13-3/711sr.felisilda-sec. 30(h)

TMD/AEB/NBY/VFT


Figure 10C Sample Ruling Issued by the Cebu Regional Office (Page 3)

REGIONAL OFFICE # 19 – DAVAO CITY

Date of Visit – Oct 11, 2006

Persons Interviewed: Regional Director Atty. Marcelinda Yap

Asst. Regional Director Atty. Nuzar N. Balatero

Legal Division Chief Atty. Felix Pepito

Assistant Chief Atty. Monica Alvizo

Meeting Notes:

1. Five lawyers are available to act as Action Attorneys in the Davao Regional Office (The Chief of the Legal Division, his Assistant Chief, and three lawyers under his unit).
2. The Regional Office covers the following districts:
 - a. Digos
 - b. Davao City
 - c. Tagum
 - d. Mati
3. The Regional Office receives requests for rulings from the revenue districts twice a week on the average.
4. The Regional Office has a copy of the 2003 Lex Libris for reference.
5. The Regional Office also used to access C.A.T.S. but the CD had expired (time-locked).
6. The Davao regional Office receives an average of 20 requests every month.
7. As a normal procedure, the Davao Regional office submits a copy of the rulings they issued during the month to the National office as part of their monthly reporting.
8. The Davao Office can issue a ruling in 1-2 weeks (fastest) but can take as long as 1-2 months (slowest).

9. The Davao Regional Office also gave us a copy of their process flow and some issues, problems, and suggestions related to the Tax Ruling Process. These will be presented and discussed in the next report.
10. A copy of a sample ruling issued by Davao is shown as Figure 11 in the following page:

Revenue Region No. 19
Davao City

RDA-RR NO. 19-Ruling No. 116-06

September 20, 2006

ECCP-042-99 (RA 6938)/006-2001
12-10-99/2-22-01

MR. CEASAR J. MAPUTOL
Chairman
Alejal Banana Planters Multi-Purpose Cooperative
Purok 10, Alejal, Carmen, Davao del Norte

Sir:

This refers to your letter requesting for a Certificate of Tax Exemption for your cooperative under the provisions of RA 6938, otherwise known as the Cooperative Code of the Philippines.

It appears that your cooperative is an agricultural multi-purpose cooperative with Certificate of Registration No. RN-8187-DVO dated May 16, 2006, that transacts business with both its members and non-members with purposes among others: to undertake joint production of cavendish bananas and marketing thereof, to engage in the supply of production inputs and market their products, to generate funds and extend credit to the members for productive and provident purposes, and to procure and distribute commodities to members and non-members. You have submitted to this office in support of your request and in compliance with Section 6 of Revenue Regulation No. 20-2001 dated November 12, 2001, the following documents, to wit: (1) Letter of application for tax exemption; (2) Certificate of Registration; (3) Articles of Cooperation; (4) BIR Certificate of Registration; (5) Certificate of Good Standing; (6) Certification under oath by the chairman that the cooperative is transacting business with its members and non-members.

Please be informed that under R.A. 6938, all duly registered cooperatives dealing/transacting business with members and non-members with accumulated reserves and undivided net savings of not more than Ten Million Pesos (P10,000,000.00) shall be exempt from paying the following taxes for which they are directly liable, to wit:

1

Figure 11A Sample Ruling Issued by the Davao Regional Office (Page 1)

- a. Income tax on income from operations;
- b. Value-Added Tax (VAT) under Section 109 pars. {L}, {M}, {N} of the 1997 Tax Code, as amended by RA 9337;
- c. 3% Percentage Tax under Section 116 of the Tax Code of 1997;
- d. Donor's Tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the cooperatives;
- e. Excise tax under Title VI of the Tax Code of 1997;
- f. Documentary Stamp Tax imposed under Title VII of the Tax Code of 1997, provided however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;
- g. Annual Registration Fee of ₱500.00 under Section 236(B) of the Tax Code of 1997.

Upon evaluation of your papers, we find you qualified for tax-exemption. However, all cooperatives regardless of classification shall be subject to:

- a. 20% final income tax on interest from any currency bank deposit and yield or any other monetary yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;
- b. 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system;
- c. Capital Gains Tax on sales or exchanges of real property classifieds as capital assets or shares of stocks;
- d. Documentary Stamp Taxes on transactions of cooperatives dealing with non-members when the accumulated reserves and undivided net savings of such cooperative exceed Ten Million Pesos (₱10,000,000.00);
- e. VAT billed on purchases of goods and services, except VAT on the importation by agricultural cooperatives of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce. All tax-free importation shall not be transferred to any person until five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or duties thereon;
- f. All other taxes for which the cooperatives are not otherwise expressly exempted by any law.

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Figure 11B Sample Ruling Issued by the Davao Regional Office (Page 2)

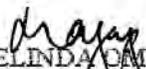
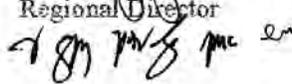
It is hereby emphasized that the personality of your cooperative is distinct and separate from its members and its tax-exempt status does not extend to the individual members thereof. Thus, members of your cooperative are liable to pay all the necessary internal revenue taxes under the National Internal Revenue Code, including the tax on earnings derived from their capital contribution. However, interests received by members of a cooperative with accumulated reserves and undivided net savings greater than Ten Million Pesos (P10,000,00.00), shall no longer be taxable in the hands of such members after lapse of the ten-year exemption. Furthermore, all cooperatives, regardless of classification, are considered as withholding agents and are required to file withholding tax returns and remit withholding taxes on all income payments that are subject to withholding.

The Tax Exemption Certificate shall be valid during such period that the cooperative is in good standing as ascertained by the CDA on an annual basis. A copy of the Certificate of Good Standing/Operation issued by the CDA to the cooperative shall together with the Annual Information Return (for non-taxable cooperative) or Income Tax Return (for taxable cooperative) and Financial Statements, shall be submitted to the BIR on or before April 15 of each year.

Pursuant to the last paragraph of Section 235 of the Tax Code of 1997, any provision or existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records, as well as the operation of all cooperatives, may be examined by the BIR annually for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liabilities, if any, upon previous consultation with the CDA.

Finally, this ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,


MARCELINE CAMILA-YAP
Regional Director


RR-19(3)
FBP/MDRA/CMG

Figure 11C Sample Ruling Issued by the Davao Regional Office (Page 3)