

20 July 2004

## **LEGAL ADVISORY NO. 03**

**TO : ALL ELECTRIC COOPERATIVES  
ALL NEA OFFICES CONCERNED**

**SUBJECT : NATIONAL TAX EXEMPTION PRIVILEGES OF ELECTRIC  
COOPERATIVES ORGANIZED UNDER P.D. 269**

For purposes of tax exemption privileges of electric cooperatives (ECs) organized under Presidential Decree No. 269, national taxes applicable to ECs may be classified into two:

1. Permanent Exemption Taxes – Those of which the ECs are permanently exempted; and
2. Temporary Exemption Taxes – Those of which the ECs are exempted but only temporarily for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion (under PD 269) or until the EC shall become completely free of indebtedness incurred by borrowing, whichever event first occurs.

ECs organized and operating pursuant to P.D. 269, as amended, are PERMANENTLY exempted from the following national taxes:

1. Income tax – as provided in Section 39 (a) (1) of PD 269;
2. Franchise tax – as provided in Section 119 of the Tax Code of 1997 and as ruled in BIR Ruling No. DA-250-03 dated July 31, 2003 which held that since ECs are not holders of legislative franchise, they are not subject to franchise tax imposed under Section 119 of the Tax Code of 1997. The fact that the (EC) members of APEC are not registered with the Cooperative Development Authority does not remove them from the coverage of said exemption from franchise tax.
3. Value – Added Tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipments, including spare parts, which shall be directly used in the generation and distribution of electricity – as provided in Section 109 (s) of the Tax Code of 1997.

4. Three Percent (3%) Percentage Tax – as provided in Section 116 of the Tax Code of 1997.

Our ECs are permanently exempted from the foregoing taxes for the simple reason that there is an effective provision of law that grants the exemption. Those other national taxes for which there is no effective provision of law granting exemption therefrom independent of Section 39 (a) (2) of PD 269 are deemed to fall under our classification of Temporary Exemption Taxes. The EC must pay these other national taxes (temporary exemption taxes) once the EC becomes completely free from indebtedness incurred by borrowing or after December 31 of the thirtieth full calendar year after the date of the EC's organization or conversion pursuant to PD 269, whichever event first occurs.

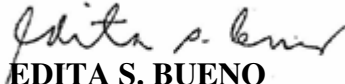
The foregoing legal advices, just like those in Legal Advisory Nos. 01 and 02, dated 15 June 2004 and 25 June 2004, respectively, are merely views and legal opinions of this Office, based on researches intended to provide assistance to electric cooperatives. These views and opinions shall remain as such unless and until the appropriate Court has ruled on them with finality. ECs are therefore encouraged to pursue test cases on these.

For your ready reference, we have attached pertinent provisions of law/ruling/circular reproduced in toto.

For your information and guidance.

  
**ATTY. JOHN JOSEPH M. MAGTULOY, CPA**  
Deputy Administrator for Legal Services

Noted by:

  
**EDITA S. BUENO**  
Administrator

Attachments as stated:

1. Section 39 of PD 269
2. Section 119 of the Tax Code of 1997
3. BIR Ruling No. DA-250-03
4. Section 109 of the Tax Code of 1997
5. Section 116 of the Tax Code of 1997
6. Revenue Memorandum Circular No. 72-2003
7. Republic Act No. 8241

### **1. Section 39 of PD 269.**

Sec.39. Assistance to Cooperative; Exemption from Taxes, Impost, Duties, Fees; Assistance from the National Power Corporation. Pursuant to the national policy declared in section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

- (a) Provided that it operates in conformity with the purposes and provision of this Decree, a cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (A) of all National Government, local government and municipal taxes and fees, including any franchise filing, recordation, license or permit fees or taxes and any fees, charges, or cost involved in any court or administrative proceeding in which it may be a party, and (B) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree; **Provided**, that the Board of Administrators shall after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemption provided for in this Decree.
- (b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative.

### **2. Section 119 of the Tax Code of 1997.**

Sec. 119. Tax on Franchises – Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year does not exceed Ten million pesos (P10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: **Provided, however**, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: **Provided, further**, That once the option is exercised, it shall not be revoked.

The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 of this code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding. (117) (as amended by R.A. No. 7416 and No. 8241)

**3. BIR Ruling No. DA- 250-03.**

(BIR Ruling: ECs registered with NEA – exemption from franchise tax imposed under Section 119 of the Tax Code of 1997.)

**4. Section 109 of the Tax Code of 1997.**

Sec. 109. Exempt Transactions – The following shall be exempt from the value-added tax:

x x x

(s) Sales by electric cooperatives duly registered with the Cooperative Development Authority or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;

x x x

The foregoing exemptions to the contrary notwithstanding, any person whose sale of goods or properties or services which are otherwise not subject to VAT, but who issues a VAT invoice or receipt therefore shall, in addition to his liability to other applicable percentage tax, if any, be liable to the tax imposed in Section 106 or 108 without the benefit of input tax credit, and such tax shall also be recognized as input tax credit to the purchaser under Section 110, all of this Code. (103)

**5. Section 116 of the Tax Code of 1997.**

Sec. 116. Tax on Persons Exempt from Value-added Tax (VAT). – Any person whose sales or receipts are exempt under Section 109 (z) of this Code from payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts: **Provided**, That cooperatives shall be exempt from the three percent (3%) gross receipts tax herein imposed.(112)

**6. Revenue Memorandum Circular No. 72-2003.**

Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.

**7. Republic Act No. 8241.**

An act amending Republic Act No. 7716, otherwise known as the expanded value-added tax law and other pertinent provisions of the National Internal Revenue Code as amended.