



Republic of the Philippines
National Electrification Administration

02 July 2007

MEMORANDUM No. 2007-018

TO : ALL ELECTRIC COOPERATIVES (ECs)

SUBJECT : Department of Finance's (DOF) Definition of Gross Receipts for the Computation of Franchise Taxes Imposed on Electric Cooperatives

Attached is copy of letter from DOF Secretary Margarito B. Teves to CENECO Board President Roberto L. Montelibano regarding the above subject. We thank CENECO President Montelibano for his support and cooperation.

This is disseminated to help the ECs in their discussions with the Local Government Units (LGUs).

For your guidance.


EDITA S. BUENO
Administrator

NATIONAL ELECTRIFICATION
ADMINISTRATION

IN REPLYING, PLS. CITE: # **OR010687**



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Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

June 15, 2007

MR. ROBERTO L. MONTELIBANO
President
Central Negros Electric Cooperative, Inc.
Gonzaga cor. Mabini Sts., Bacolod City
Negros Occidental

Robby
Dear Mr. Montelibano:

Re: Definition of "Gross Receipts" for the Computation of Franchise Taxes Imposed on Electric Cooperatives

This refers to your letter-fax of May 29, 2007.

The Department of Finance re-affirms the legal opinion previously issued by the Bureau of Local Government Finance (BLGF) on the matter in response to queries of electric cooperatives similarly situated.

For purposes of local taxation, the "gross receipts"¹ of electric cooperatives shall be the total consumer billings excluding the following: a) generation charge/s; b) transmission charge/s; c) system loss charge/s; d) universal charge/s; and e) reinvestment fund/s.

The basis for such exclusion are the Supreme Court cases *Commissioner of Internal Revenue v. Makati Jockey Club* (G.R. Nos. L-13887 and L-13890, June 30 1960) and *Commissioner of Internal Revenue v. Tours Specialists, Inc.* (G.R. No. 66416, March 21, 1990), both of which upheld the principle that funds merely held in trust by a taxpayer and earmarked for another person or entity, pursuant to law or private agreement, do not form part of that taxpayer's gross receipts.

The "generation charge" collected by the Central Negros Electric Cooperative, Inc. (CENECO) is a pass-through rate charged by the

¹ As defined under Section 131 and as provided for under Sec. 137, in relation to Sec. 151, of the Local Government Code of 1991 or Republic Act No. 7160.

National Power Corporation (NPC) as the cost of generating power sold to electric cooperatives.

“Transmission charges” are regulated costs or charges for the use of transmission systems, which may include avilment of ancillary services. These are collected on behalf of the National Transmission Corporation (TransCo).

“System loss charges” are charges for the recovery of the cost of power lost due to technical and non-technical losses.²

“Universal charges”³ are imposed pursuant to Sec. 34 of Republic Act No. 9136 (Electric Power Industry Reform Act of 2001). These are collected from all end-users by the distribution facilities and TransCo and remitted to the Power Sector Assets Liabilities Management (PSALM) Corporation.

² See Republic Act No. 7832 (Anti-Pilferage Act of 1994).

³ Sec. 34. *Universal Charge.* – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

- a. Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;
- b. Missionary electrification;
- c. The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-a-vis imported energy fuels;
- d. An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P 0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and
- e. A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

"Reinvestment funds" are allocations mandated by the National Electrification Administration (NEA) pursuant to Presidential Decree No. 269 and used to finance the rehabilitation/extension of lines or maintenance/upgrading of substations. Since these cannot be utilized for other purposes, they cannot be considered as part of the income/earnings of CENECO.

Considering all of the above, the aforementioned charges must be excluded in the determination of the gross receipts of CENECO.

Thank you for your attention.

Very truly yours,



MARGARITO B. TEVES
Secretary of Finance

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