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AUG 31 2004

DENR ADMINISTRATIVE ORDER
NO. 2004- 53

Subject : Guidelines to Implement the Tax Incentives Provision Under Section 13 of Republic Act No. 8749 Otherwise Known as the Philippine Clean Air Act of 1999

Section 1. Legal Bases

These implementing guidelines are being issued pursuant to Section 13 of Article 1, Chapter II of Republic Act No. 8749 also known as the "Philippine Clean Air Act of 1999", and Section 1 of Rule XXIII of DAO 2000-81, Implementing Rules and Regulations (IRR) for RA 8749.

Section 2. Scope

These implementing guidelines apply to industries which shall install pollution control devices or retrofit their existing facilities with mechanisms that reduce pollution in compliance with the air quality standards set forth in the Act and its IRR.

Section 3. Definition of Terms

- a. "Act" refers to Republic Act No. 8749 otherwise known as the Philippine Clean Air Act of 1999;
- b. "Air Emission" means any measurable air contaminant, pollutant or gas stream from a known source that is passed into the atmosphere;
- c. "BIR" refers to the Bureau of Internal Revenue of the Department of Finance;
- d. "Department" refers to the Department of Environment and Natural Resources;
- e. "EMB" refers to the Environmental Management Bureau of the Department of Environment and Natural Resources;
- f. "Incentives-Administering Agency" refers to Board of Investments of the Department of Trade and Industry, Philippine Economic Zone Authority, Department of Finance and its concerned bureaus, Subic Bay Metropolitan Authority, Clark Development Corporation and all other special economic and freeport zone authorities;
- g. "Industry" consists of a group of establishments engaged in the same or similar kinds of activity. An "establishment" is an **enterprise** or part of an enterprise, that is situated in a single location and in which only a single (non-ancillary) productive activity is carried out or in which the principal productive accounts for most of the value added. An enterprise is an institutional unit in its capacity as a producer of goods and services;
- h. "IRR" refers to DAO 2000-81, the Implementing Rules and Regulations of the Act;
- i. "Mechanisms that Reduce Pollution" means systems, approaches, techniques, or equipment which, when used, result in lower emissions to comply with air quality standards set under the Act and its IRR;

- k. "Permit to Operate" refers to the legal authorization granted by the EMB to qualified enterprises to operate or maintain any air pollution installation for a specified period of time;
- l. "Pollution Control Device" means any machinery, equipment or apparatus used to prevent, control or abate the pollution of air caused by emissions from identified pollution sources at levels within the air quality standards set under the Act and its IRR;
- m. "Qualified Enterprise" refers to any individual, partnership, cooperative, corporation or other entity incorporated and/or organized and existing under Philippines laws which installed pollution control device or retrofitted its existing facilities in order to comply with the emission standards set under the Act as evidenced by a valid Permit to Operate issued by the EMB;
- n. "Retrofit" means to install "add-on facilities" or upgrade and/or rehabilitate old or existing facilities/equipment or set-up and utilize machinery and equipment or devices with the objective of reducing air emissions to comply with air quality standards set under the Act and its IRR; and
- o. "Special Economic Zones" refer to selected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are more particularly fixed or delineated by Presidential Proclamations. A Special Economic Zone may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/ recreational centers.

Section 4. Tax Incentives

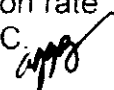
A qualified enterprise may avail of the following tax incentives provided for under existing laws subject to the rules and regulations of concerned incentives-administering agencies.

4.1 Tax Incentives Under NIRC

4.1.1 Accelerated Depreciation – A qualified enterprise shall be allowed to deduct from gross income a reasonable depreciation allowance for the exhaustion, wear and tear including reasonable allowance for obsolescence of pollution control devices installed or retrofitted with mechanisms that reduce pollution in compliance with existing legal requirements under the Act. Pursuant to Section 34(F)(2) of the NIRC, a qualified enterprise can avail of the following depreciation methods:

- (a) Straight-line method;
- (b) Declining-balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in Subsection (F)(1) of the NIRC;
- (c) Sum-of-the-years digit method;
- (d) Any other method which may be prescribed by the Secretary of Finance upon the recommendation of the BIR Commissioner.

The agreement between the qualified enterprise and the BIR as to useful life of the pollution control devices on which depreciation rate is based shall be in accordance with Section 34 (F)(3) of NIRC.



4.1.2 Deductibility of Research and Development Expenditures – Pursuant to Section 34 (I) of NIRC, a qualified enterprise shall be allowed to deduct from gross income expenditures for research and development on mechanisms, techniques or equipment that reduce air pollution to comply with the air quality standards set under the Act

4.1.3 Tax Credits – In accordance with Section 110 of the NIRC, input taxes paid by a qualified enterprise on its purchases or importations of pollution control devices, supplies and materials used for purposes of retrofitting existing facilities as evidenced by a VAT invoice or official receipt shall be creditable against its output tax.

The treatment of the excess output or input tax as well as determination of creditable input tax for purposes of claiming for refund or tax credit for VAT shall be governed by Section 110 (B) and (C) of the NIRC.

4.2 Exemption from Real Property Tax

Pursuant to Section 234 (e) of the Local Government Code, machinery and equipment used for pollution control and environmental protection shall be exempted from payment of real property tax.

4.3 Tax Incentives for Qualified Enterprises Operating Within Special Economic and Freeport Zones

Qualified enterprises operating inside special economic and freeport zones that shall install pollution control devices or retrofit their existing facilities with mechanisms that reduce pollution shall be governed by existing rules and regulations of concerned incentives-administering agencies.

Section 5. Availment of Tax Incentives

(1) The applicant must secure a Permit to Operate (P/O) from the EMB in accordance with its existing procedures and requirements. The P/O shall serve as proof of eligibility for the availment of tax incentives;

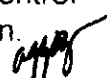
(2) A certified true copy of the P/O shall be attached to the annual income tax return for the availment of the accelerated depreciation deduction and deduction for research and development expenditures under the NIRC. For availment of exemption from real property tax, a certified true copy of the P/O shall be attached to the claim for tax exemption to be filed with the provincial/city/municipal assessor;

(3) The P/O issued for purposes of incentives is valid only within the taxable year the tax incentives are claimed.

The flowchart on the availment of tax incentives appears as Annex A.

Section 6. Inspection of Pollution Control Device

The EMB shall conduct technical inspections to verify if the pollution control device is properly installed and used in accordance with the firm's application.



The qualified enterprise shall provide actual sampling test results or mathematical computation regarding the installed pollution control device and shall consent to all inspections. The sampling test should be undertaken in the presence of the EMB representative.

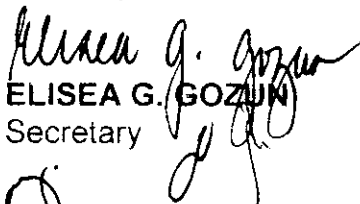
In case of mathematical computation, it must be signed by the enterprise's Pollution Control Officer duly accredited by the EMB. The party or person responsible for the source/s of air emission shall assume responsibility for demonstrating proof of compliance, which the EMB may subject to independent verification if it deems necessary.

Section 7. Penal Provision

Any qualified enterprise found to be engaged in any irregularity such as but not limited to making fraudulent claims, submitting incorrect information, keeping false records of transactions or operations or diverting the use of the pollution control device to purposes other than its intended use with the intent to unduly avail of tax incentives shall be subject to the pertinent penalties provided under Title X-Statutory Offenses and Penalties of the NIRC without prejudice to prosecution for any other acts punishable under existing laws such as Section 47 of the Act.

Section 8. Effectivity

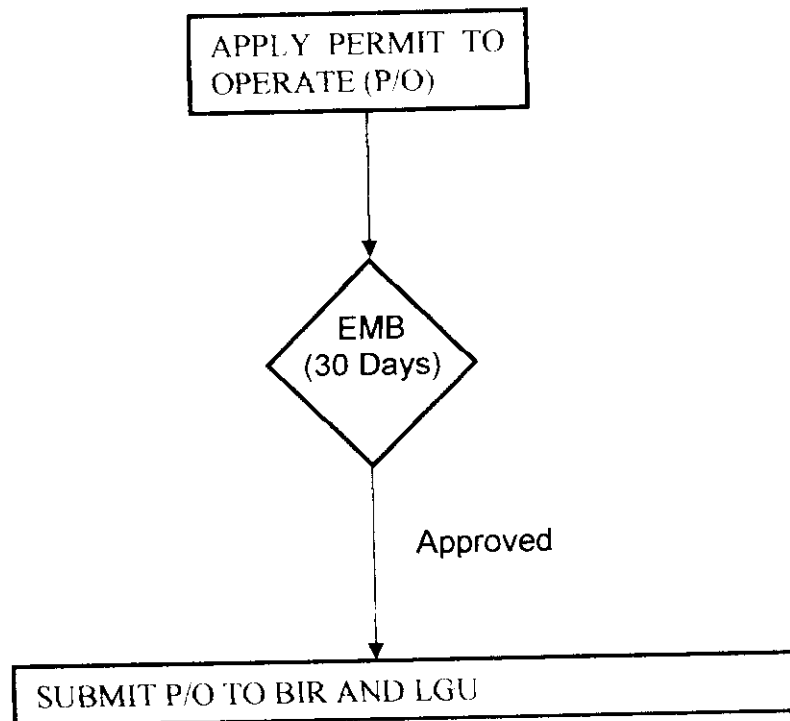
This Administrative Order shall take effect fifteen (15) days after its publication in a newspaper of national circulation and upon receipt by the Office of National Administrative Registry (ONAR) of a copy hereof.


ELISEA G. GOZUN
Secretary

PUBLISHED : TODAY
SEPTEMBER 4, 2004

ANNEX A

PROCEDURE FOR AVAILMENT OF TAX INCENTIVES



I. BIR (within taxable year)

- a. Accelerated Depreciation
- b. Deductibility of R&D Expenditures**
- c. Tax Credits

II. LGU

- a. Exemption from Real Property Tax
(to be filed within 30 days from the declaration of machineries/equipment)

Notes:

- * P/O issued for the purpose of incentives is valid only within the taxable year the tax incentives are claimed.
- **Not applicable to economic zone locators under the 5% gross income tax incentive.