

Situs of the Tax Rule Under the Local Government Code of 1991: Issues and Problems*

I. INTRODUCTION

The business tax is one of the taxes imposed and collected by the local government units (LGUs) specifically, cities and municipalities. Under the Local Government Code (LGC) of 1991, the tax is imposed on eight (8) business clusters, viz.: (a) manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits and wines, or manufacturers of any article of commerce of whatever kind or nature; (b) wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature; (c) exporters and manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities; (d) retailers; (e) contractors and other independent contractors; (f) banks and other financial institutions; (g) peddlers engaged in the sale of any merchandise or article of commerce; and (h) other businesses which the *Sanggunian* concerned may deem proper to tax.¹

With the complexities in the operation of some businesses, there may be instances when the business tax is paid only to the LGU where the main business office is located or the major business operations are conducted. Other LGUs which host other activities/transactions of the business find this situation inequitable since they also provide services that benefit these businesses and yet they do not get a share from the local business tax (LBT) from the sales made outside their jurisdiction. Hence, there are lots of queries from the LGUs as well as from business owners to the Bureau of Local Government Finance (BLGF) seeking for its legal opinion on the appropriate sales allocation given their various business situations.

In view thereof, this paper reviews Section 150 of the LGC which provides for the allocation of the gross receipts/sales and consequently, the collection of the tax due thereon to LGUs hosting the different activities of the business. It also presents sample cases related to the situs rules which are referred to the BLGF and the corresponding legal opinions from the perspective of the said agency. It also presents other notable issues and problems pertinent to the situs of taxation and recommendations thereto.

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¹ Section 143 (a) to (h), LGC.

II. BACKGROUND INFORMATION

(a) Definition

Situs *per se* means location or site. The situs rule is defined as a provision of tax law setting out the factors which determine where a particular asset is situated or deemed to be situated for tax purposes. The location of the assets may be a decisive element in determining tax liability.²

In this paper, it refers to the place/location where an item or property is taxed with due regard to the following: (1) domicile/residence of the owner; (2) business location; (3) place where the business is registered or licensed; and (4) whether or not the business is taxed by other jurisdictions.³ Oftentimes, the situs of the tax is the place where the business transaction/activity is performed or engaged in. This approach is used for the purpose of achieving a more objective and equitable manner for computing and collecting business taxes.

A basic consideration justifying the situs of the tax is that taxes are paid in exchange for the protection and other services that the taxpayers get from the government. The power of the State or the taxing authority to impose taxes is confined only within its territorial jurisdiction. Thus, a person, property, business or any transaction, outside a government's domain is not liable for any tax within that country or locality.⁴

(b) Legal Basis

In the Philippines, the situs of the local business tax is the place where sales transactions take place and are recorded. For this purpose, the gross receipts/sales are allocated among the business units that contribute to the total sales. These include the principal office (PO)⁵; branch or sales office/s (B/SO)⁶; warehouse/s (WH)⁷;

² International Tax Glossary, Second Edition, International Bureau of Fiscal Documentation, 1992 IBFD Publications BV.

³ Ramelo, Gloria and Ferdinand Gutierrez. "*A Basic Approach to Income Taxation.*" Philippines. 2002. pp. 6-7.

⁴ *Ibid*

⁵ Refers to the head or main office of the business appearing in the pertinent documents submitted to the Securities and Exchange Commission (SEC), or the Department of Trade and Industry (DTI), or other appropriate agencies as the case may be. See Article 243(a)(1), implementing rules and regulations (IRR) of the LGC.

⁶ A fixed place in a locality which conducts operations of the business as an extension of the principal office. Offices used only as display areas of the products where no stocks or items are stored for sale, although orders for the products may be received, are not considered branch or sales offices. See Article 243(a)(2), IRR.

plantation (PL)⁸; factory/ies (F)⁹; experimental farm/s (EF)¹⁰; project office/s (PrOs)¹¹; port of loading (POL); and route sales (RS). Under Section 150 of the LGC, the allocation of sales is as follows:

Table 1. ALLOCATION OF SALES UNDER THE LOCAL GOVERNMENT CODE

BUSINESS CLUSTER/S	BUSINESS UNIT/S	SALES ALLOCATION
(1) Manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and	Business maintains or operates a B/SO.	Record the sale in the B/SO making the sale or transaction and the tax thereon shall accrue and shall be paid to the municipality or city where the B/SO is located. [Section 150(a)]
wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses	Business <i>does not</i> have a B/SO but maintains a PO.	In case there is no B/SO in the city or municipality where the sale or transaction is made, the sale will be recorded in the PO and the taxes due shall accrue and shall be paid to such city or municipality. [Section 150(a)]

⁷ A building utilized for the storage of products for sale and from which goods or merchandise are withdrawn for delivery to customers or dealers, or by persons acting in behalf of the business. A warehouse that accepts orders and/or issue sales invoice is considered a branch or sales office. See Article 243(a)(3), IRR.

⁸ A tract of agricultural land planted to trees or seedlings whether fruit bearing or not, uniformly spaced or seeded by broadcast methods or normally arranged to allow highest production. For purposes of Article 243 of the IRR, inland fishing ground shall be considered as plantation. See Article 243(a)(4), IRR.

⁹ A building or group of buildings appropriated to the manufacture of goods, including the machinery necessary to produce the goods, and the engine or other power by which the machinery is propelled. It is the place where workers are employed in fabricating goods, wares, or utensils. See Black's Law Dictionary, Revised 4th Edition.

¹⁰ Agricultural lands utilized by a business or corporation to conduct studies, tests, researches or experiences involving agricultural, agribusiness, marine, or aquatic, livestock, poultry, dairy and other similar products for the purpose of improving the quality and quantity of goods or products. See Article 243(a)(5), IRR.

¹¹ Refers to the field office in the construction site. It is equivalent to the factory of a manufacturer. See DOF-Local Finance Circular No. 3-95.

BUSINESS CLUSTER/S	BUSINESS UNIT/S	SALES ALLOCATION
(2) Manufacturers, assemblers, contractors, producers, and exporters with F, PrO, and PL.	Business maintains a PO as well as a F, PrO, or PL	30% of all sales recorded in the PO will be taxable by the city or municipality where the PO is located, and the remaining 70% will be taxable by the city/ies or municipality/ies where the F, PrO, or PL is/are located. LGUs where only EFs are located will not be entitled to the sales allocation provided in this sub-section. [Section 150(b)]
	The PL is located at a place other than the place where the F is located.	The 70% allocation shall be divided as follows: a. 60% to the city or municipality where the F is located; and b. 40% to the city or municipality where the PL is located. [Section 150(c)]
	There are two or more Fs, PrOs, or PLs.	The 70% sales allocation mentioned above will be prorated among the city/ies or municipality/ies where said Fs, PrOs, or PLs are located in proportion to their respective volumes of production during the taxing period. [Section 150(d)]

In addition to the above, the LGC Implementing Rules and Regulations (IRR) provide the following regulations on POL, EFs and sales made by route trucks, vans, and other vehicles (RS), viz.:

BUSINESS CLUSTERS	BUSINESS UNIT/S	SALES ALLOCATION
(1) Exporters	Business maintains either a PO, B/SO, WH, F or PL in a locality where there is POL	City or municipality where a POL is located shall not be authorized to levy or collect business taxes unless the exporter maintains a PO, B/SO, or WH, F, PL in said city or municipality. [Article 243(c)]

BUSINESS CLUSTERS	BUSINESS UNIT/S	SALES ALLOCATION
(2) Manufacturers, producers, wholesalers, retailers, or dealers	RS Business maintains a B/SO or WH.	RS made in the locality where a manufacturer, producer, wholesaler, retailer, or dealer has a B/SO or WH will be recorded therein. The tax will be payable to the city or municipality where the B/SO or WH is located. [Article 243(d)(1)]
	RS Business <i>does not</i> maintain a B/SO or WH.	RS will be recorded in the B/SO or WH where the route trucks withdraw their products for sale. The tax will accrue to the city or municipality where the B/SO or WH is located. [Article 243(d)(2)]

III. SAMPLE CASES ON THE SITUS OF THE TAX

In the last five years (2013-2017), a total of 35 or about 20% of the total number of queries referred to the BLGF deal with situs of the tax as the subject matter, 28 of which were from taxpayers while the remaining 7 were from local chief executives or treasurers. The following are some of the sample cases related to the situs rule referred to the Bureau and its corresponding opinion on the matter:

Case 1: Tax Situs of a Manufacturer with B/SO in different LGUs, and PO and Manufacturing Plant Located in the Same LGU

Representation: Cardams, Inc. (CI) is a shoe and bag manufacturer maintaining a PO and manufacturing plant in Pasig, and B/SOs around Metro Manila and nearby provinces. CI's PO serves as a monitoring office and does not sell finished goods on either retail or wholesale basis. All the finished products are sent and sold at its different B/SOs where the sales are recorded in the corresponding sales books of each B/SO.

Issue: Whether or not Pasig City can assess 70% of the sales made and recorded by CI's B/SOs all over the country, or 100% of the sales because the PO and manufacturing plant are located therein.

DOF-BLGF Opinion: No. All sales made by the B/SOs will be recorded in the respective sales books of said B/SOs and the tax shall be paid to the city or municipality where these B/SOs are located. In the case of Pasig City where the PO and manufacturing plant are situated, it will not have a share in the sales or receipts made

by the B/SOs pursuant to Article 243(b)(1) of the IRR implementing Section 150 of the LGC. Thus, it is not proper for Pasig City to assess 70% nor 100% of the sales made and recorded by B/SOs in other LGUs.¹²

Case 2: Tax Situs of Depots

Representation: Republic-Asahi Glass Corporation (RAGC) maintains its PO, F and B/SO in Pasig City. It also operates 10 provincial depots located in the different cities and municipalities all over the Philippines. One of the functions of the depots is to accept orders from dealers in their respective areas.

Issue: Whether or not the depots of RAGC may be considered as B/SOs which will preclude Pasig City, where the PO is located, to share in the taxable gross receipts/sales made by the depots.

DOF-BLGF Opinion: Yes. The depots of RAGC accept orders from customers. Under Article 243(a)(3) of the IRR, a WH¹³ should be utilized first as a “sales office” before an LGU can validly impose a business tax. Hence, the depots of RAGC are also considered as B/SOs. As “B/SO”, the gross receipts/sales made by the depots should be recorded in their respective books of accounts and 100% taxable in the LGU where they are located. Pasig City, which hosts the PO, is therefore not entitled to a share of the sales made by the depots.¹⁴

Case 3: Tax Situs of a Business with a PO, B/SOs, WHs and F in different LGUs

Representation: Philippine Belt Manufacturing Corporation (PBMC) is a manufacturer of industrial and automotive fan belts. Its manufacturing plant and PO are located in Novaliches, Quezon City. It maintains several B/SOs in Manila, Cebu, Bacolod, Davao and Iloilo. Like the manufacturing plant, said B/SOs are involved in promoting and selling their products. Each B/SO maintains a WH and accepts orders and issues invoices. The sales are recorded in their sales books and consolidated in the PO.

Issues: Whether or not Quezon City where the manufacturing plant and PO are located can share from the sales made by the B/SOs in Manila, Cebu, Bacolod, Davao and Iloilo.

DOF-BLGF Opinion: No. Pursuant to Section 150 of the LGC, as implemented by Article 243(b)(3) of the IRR, sales made by the B/SOs located in Manila, Cebu, Bacolod, Davao and Iloilo must be recorded separately in their respective sales books and

¹² DOF-BLGF Opinion, March 13, 1998.

¹³ As contemplated in Section 150 of the LGC as implemented by Article 243 of the IRR, a depot where products are stored for sale and one of its basic functions is to accept orders from dealers in their areas may be considered as a warehouse.

¹⁴ DOF-BLGF Opinion, August 26, 1993.

should not be consolidated with the sales in the PO. Since both the PO and manufacturing plant are located in Quezon City, only the sales recorded in the PO and manufacturing plant will be taxable therein. Accordingly, the five localities hosting the B/SOs will tax 100% of the sales recorded in each B/SO. Quezon City will not be entitled to a share in the business taxes paid to said localities.¹⁵

Case 4: Tax Situs of a Business with PO and F in the Same LGU, and Two Regional Offices in Two Different LGUs

Representation: Kawasaki Motors (Phils.) Corporation (KMPC) is a duly registered domestic corporation where its primary purpose is to manufacture, assemble, buy, sell on wholesale, trade, use, service, repair, alter, deal in motorcycles and articles of every kind and description. Its PO and F are both located in Muntinlupa City. However, it has two existing regional offices serving as extension of the PO. One is located in Mandaue City catering motorcycle deliveries in Visayas area and the other is located in Davao City for deliveries in Mindanao area.

For purposes of business tax and renewal of business permit, KMPC has been consistently paying tax dues in this manner:

1. 100% of sales allocated/delivered in the entire Luzon area are declared and corresponding business taxes are paid in the City of Muntinlupa;
2. 100% of sales allocated/delivered in the entire Visayas area are declared and corresponding business taxes are paid in the City of Mandaue; and
3. 100% of sales allocated/delivered in the entire Mindanao area are declared and corresponding business taxes are paid in the City of Davao.

In 2014, KMPC was assessed by Muntinlupa on the basis of Section 150(b) of the LGC which provides the following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

- (1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and
- (2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.

Pursuant to the above provisions of the LGC, KMPC requested opinions from Mandaue City and Davao City. The City Treasurer of Mandaue was amenable in the assessment of Muntinlupa City and even issued a certificate of tax credit for the overpaid taxes. However, the City Treasurer of Davao is not agreeable in the said assessment and

¹⁵ DOF-BLGF Opinion, January 29, 2002.

argued that the law specifically provided in Section 150(a) that sales of the B/SO shall be paid to the municipality or city where that particular branch is located. It also states that in instances where there is no branch or sales office in the said municipality, the 30%-70% sharing of the gross sales will apply, but since Kawasaki has already an existing branch in the city, the contention of the City Government of Muntinlupa has no legal or jurisdictional basis.

Issues:

(1) Whether or not Muntinlupa City is correct in its position that the 70%-30% sales allocation shall be applied for all sales allocated/delivered by the regional offices in the cities of Mandaue City and Davao City since the F is located in Muntinlupa.

(2) Whether or not delivery receipts serve as valid evidence of sales allocation. If not, if KMPC issued sales invoices in the regional offices, will it be considered evidence of sales allocation?

BLGF Opinion: No. Considering that all sales transactions are consummated and recorded in Muntinlupa City, where both the PO and F are located, 100% of the sales shall be declared and taxable in Muntinlupa. The 70%-30% allocation being claimed by Davao City will not be applicable to both the cities of Davao and Mandaue since, as represented, only delivery receipts are being issued by those regional offices of KMPC. For a fact and as commonly understood, delivery receipt refers to a document evidencing the delivery of a shipment, typically signed by the receiver to indicate that they have in fact received the item being shipped and have taken possession of it. In short, an acknowledgment by a delivery receipt makes sure that the goods were actually received by the intended recipient. However, in the event that the regional offices which maintain WH in the cities of Davao and Mandaue accept sales orders, which is one of the functions of the said regional offices, it should be considered as B/SO and all accepted sales orders should be recorded therein and 100% taxable to Davao and Mandaue, respectively.¹⁶

Case 5. Tax Situs of Leasing Company

Representation: Uni-Delta Development Corporation (UDDC) is engaged in leasing out properties. Its PO is located in Naga City. UDCC recently acquired a property in Quezon City and plans to acquire another in Bocaue, Bulacan. UDDC does not maintain offices in Quezon City and Bocaue, Bulacan.

Issue: Whether or not UDCC is only liable to pay LBT in Naga City.

BLGF Opinion: Yes. Business entity like UDDC which does not maintain any B/SO where the real properties subject of lease are situated shall record the rental fees in the PO and that the taxes due thereon shall accrue and shall be paid 100% to Naga City

¹⁶ BLGF Opinion, August 6, 2015

where the PO is located, to the exclusion of Quezon City and Bocaue, Bulacan, where UDDC's real properties are situated. The real property of UDDC in Quezon City as well as the soon-to-be-acquired property in Bocaue, Bulacan can never be considered as B/SO to satisfy Section 150(b)(2)(1) of the LGC.¹⁷

Case 6. Tax Situs of Lessor of Real Property where PO and Leased Properties are Located in Different LGUs

Representation: Sandoz Realty is a real estate land lessor in Canlubang, Calamba City with PO located in Makati City where its lease transactions are being recorded and where invoices and official receipts are being issued.

Calamba Business License Office claimed that Sandoz Realty should declare in Calamba City 70% of its gross revenues as basis for the computation of relevant tax on revenues from land leasing and the balance of 30% of its gross revenues in Makati City. On the other hand, Makati Business License Office is not amenable to this arrangement. Instead, it requires Sandoz Realty to declare in Makati City 100% of its gross revenues for the computation of the relevant real estate lessor's tax.

Issue: Whether or not Makati and Calamba Business License Offices should impose the business tax on Sandoz Realty.

BLGF Opinion: No. Sandoz Realty is not liable for local business tax to the City of Calamba for the simple reason that the real properties being leased may not be considered as a F, PrOs, or PL.

Citing BLGF Opinion of Golden Arches Realty Corporation (GARC)¹⁸, a business entity which does not maintain any branch or sales outlet elsewhere, shall record the sales in the PO and that the taxes due shall accrue and shall be paid 100% to the city where the PO is located, to the exclusion of other LGUs where real properties subject of lease agreements with lessee-companies are situated.¹⁹

Case 7: Tax Situs of a Business with a PO, Processing Plant, Two WHs and Two B/SOs in Different LGUs

Representation: Philippine Dairy Products Corp. (PDPC), a precursor to Magnolia, Inc., is an established joint venture between San Miguel and New Zealand Dairy Board. It is engaged in food business which expands to poultry and livestock, dairy products, fresh and processed meats, and agriculture. It maintains a PO in Pasig City, a processing plant, a WH and a B/SO (for Luzon Area sales) in General Trias, Cavite and a WH and B/SO in Cebu City (for Visayas and Mindanao Area sales). In the case of GMA,

¹⁷ BLGF Opinion, June 10, 2014.

¹⁸ BLGF Opinion dated 10 July 2007.

¹⁹ BLGF Opinion dated 23 February 2015.

since there is no B/SO maintained for it, all of its sales are recorded in the PO located in Pasig City.

The Cavite plant maintains a WH that directly ships its products to various customers and distributors in the above areas through contracted haulers. Processing of the delivery receipts and subsequently, the issuance of sales invoices for said customers and distributors also take place in the Cavite plant. For the requirements of Tacloban, Ormoc, Dumaguete, Bacolod, Iloilo and the rest of Mindanao, products are shipped straight from Cavite plant to the respective distributors in the said areas.

Issue: What is the proper interpretation of Section 150 of the LGC of 1991?

BLGF Opinion: All sales made in its Luzon Area B/SO in General Trias, Cavite shall be recorded thereat where such B/SO is located and shall be 100% taxable by General Trias, Cavite. All sales made and recorded in its PO, i.e., the GMA sales shall be 30% taxable by Pasig City where the PO is located and 70% taxable by General Trias, Cavite where the plant is located. All sales made in Cebu and Bohol shall be recorded in the Area B/SO in Cebu City and shall be 100% taxable by said City. All sales made in Tacloban, Ormoc, Dumaguete, Bacolod, Iloilo and the rest of Mindanao should be recorded in the PO and shall be 30% taxable by Pasig City and 70% taxable by General Trias, Cavite.²⁰

Case 8: Tax Situs of a Business with Manufacturing Plant, PO and B/SO in Various LGUs

Representation: Holcim Philippines, Inc. (HPI) is a corporation principally engage in the business of manufacturing cement and ready-mix concrete products. It has a PO in Taguig City and operates 4 cement manufacturing plant located in (i) the Municipality of Bacnotan, La Union, (ii) Davao City, (iii) the Municipality of Lugait, Misamis Oriental, and (iv) Norzagaray (the Bulacan Plant). It maintains 20 B/SO in the following locations:

- | | | |
|--------------------|---------------|----------------------|
| 1. Tuguegarao | 2. Isabela | 3. Las Piñas |
| 4. Baguio | 5. Iloilo | 6. Nueva Vizcaya |
| 7. Vigan | 8. Urdaneta | 9. Cebu |
| 10. Cabanatuan | 11. Lugait | 12. Cagayan de Oro |
| 13. Pampanga | 14. Pasig | 15. Pulilan |
| 16. Davao | 17. Bacolod | 18. Calaca, Batangas |
| 19. General Santos | 20. Zamboanga | |

HPI's cement manufacturing plant in Davao and Lugait, Misamis Oriental also function as B/SO.

²⁰ BLGF Opinion, April 27, 2000.

Norzagaray's Municipal Treasurer assessed HPI for alleged deficiency LBT on account of HPI's purportedly unreported sales — which was arrived at by multiplying (i) the total number of bags of cement produced by the Bulacan Plant for the years 2005 to 2010 by (ii) the average price per bag of cement during those years. Norzagaray claimed that it has authority to assess LBT upon the presumed value of 70% of all bags of cement produced by the Bulacan plant whether or not they are sold, or if indeed sold, irrespective of the place where the sales transactions were made or consummated.

Doña Remedios Trinidad (DRT) (through its Mayor and Municipal Budget Officer) asserted that it is entitled to an allocation equivalent to 40% of 70% of HPI's gross receipts recorded in its PO pursuant to Section 150(c)(2) of the LGC. DRT is of the view that term "plantation" under Section 150(c)(2) means the "source of raw materials" used by HPI for cement production in its Bulacan Plant.

Issues:

(1) Whether or not Norzagaray (the municipality where the Bulacan plant is located) is entitled to impose LBT upon the presumed value of 70% of all bags of cement produced by the Bulacan plant regardless of whether these are sold, or if indeed sold, irrespective of the place where the sales transactions were made or consummated.

(2) Whether or not DRT (the municipality which is the source of the limestone, shale and diorite reserves used as raw material for cement production in the Bulacan plant) is entitled to an allocation equivalent to 40% of 70% of HPI's gross receipts recorded in its PO pursuant to Section 150(c)(2) of the LGC.

BLGF Opinion: No. The Municipality of Norzagaray cannot impose LBT on HPI since the tax is based on gross sales or receipts realized during the preceding calendar year. The use of the presumptive value of bags of cement produced by the Bulacan plant, whether sold or not, cannot be made as basis for the computation of LBT even in the application of situs rule provided under Section 150 of the LGC and as implemented under Article 243 of the IRR. Thirty percent (30%) of all sales or receipts recorded in the PO shall be taxable by Taguig City where the PO is located, and the remaining 70% shall be taxable by Norzagaray where the Bulacan plant is located and Norzagaray shall not share in the allocation pertaining to sales recorded in the B/SO elsewhere except if such B/SO is located thereat.

The allegation of the Municipal Mayor and Municipal Budget Officer of DRT that the term "plantation" under Section 150(c)(2) of the LGC means the "source of raw materials" is not in full accord to the definition of the term "plantation" provided under Article 243(a)(4) of the IRR. The term "plantation" is limited only to "a track of agricultural land planted to trees or seedlings and inland fishing ground". DRT is not entitled to the allocation equivalent to 40% of 70% of HPI's gross receipts recorded in the PO for lack of legal basis in the law.²¹

²¹ BLGF Opinion, June 11, 2013.

Case 9: Tax Situs of a Manufacturer with a PO and Two (2) F Located in Different LGUs

Representation: Oriental Tin Can and Metal Sheet Manufacturing Co. (OTC) is a manufacturer of food grade tin can maintain a PO and main F in Quezon City. It has another F in General Santos City. All sales made in the F in General Santos City are recorded in the PO in Quezon City.

Issue: Whether or not the Treasurer of General Santos City can validly impose 100% tax on all sales made by the F in General Santos City.

DOF-BLGF Opinion: No. Since all sales made by OTC are invoiced and recorded in its PO in Quezon City, including those made in General Santos City, 30% of all sales recorded in the PO will be taxable in Quezon City and the remaining 70% will be prorated between Quezon City and General Santos City on the basis of the respective volumes of production of the Fs located therein pursuant to Section 150(a) of the LGC.²²

Case 10: Tax Situs of a Mining Company with PO and a ProOs

Representation: Philex Mining Corporation (Philex) has mining operations in the municipalities of Itogon and Tuba, both in the province of Benguet. All sales transactions are recorded in the PO in Pasig City.

The Municipal Treasurer of Itogon, Benguet requested Philex to submit a true and complete return setting forth its gross receipts for its mining operation for purposes of determining the taxes, fees and charges due. On the other hand, Philex refuted the request on the ground that no sales transactions are being conducted/recorded within the Municipality of Itogon because these are already done in Pasig City where the PO is located.

Issue: Whether or not Philex is liable to pay LBT to the Municipality of Itogon, Benguet.

BLGF Opinion: Yes. Section 2 of Local Finance Circular (LFC) 2-09 which defines mining area as a portion of the contract area identified by the contractor (mining company) for purposes of development, mining, utilization, and sites for support facilities or in the immediate vicinity of the mining operations. Mining area shall be synonymous to project site. In addition, Section 4(b) of LFC 2-09 provides that the following sales allocation shall apply to manufacturers, contractors, producers, processors and exporters with project offices/mining areas in the pursuit of their business:

- (1) Thirty percent (30%) of all sales recorded in the PO shall be taxable by the city or municipality where the PO is located: and

²² DOF-BLGF Opinion, September 19, 1997.

- (2) Seventy percent (70%) of all sales recorded in the PO shall be taxable by the city or municipality where the F, PrO, or PL is located.

In the case of mining areas that are geographically located in two (2) or more localities, the allocation of the business tax imposed by LGUs concerned shall be decided by the "Committee" which will be created in localities where there are mining operations.²³

In this case, even if Philex sales transactions are recorded 100% at its PO in Pasig City, still it does not preclude LGU-Itogon from collecting local business tax from Philex for its gross sales or receipts realized for the period 2003-2009.²⁴

Case 11: Tax Situs of Contractors²⁵ with PrOs in Different LGUs

Representation: Kajima Resources Development Corporation (KRDC) is engaged in general construction activities throughout the Philippines. It maintains its PO in Makati City and various PrOs in different municipalities nationwide.

Issue: Whether or not the basis of the tax of KRDC payable to Makati City is 30% of the total gross receipts and the remaining 70% is to be allocated to various municipalities where its PrOs are located.

DOF-BLGF Opinion: Yes. Under Local Finance Circular (LFC) No. 3-95 dated May 22, 1995, 30% of the gross receipts recorded from KRDC's PO in Makati City are taxable therein and the remaining 70% of the gross receipts will be prorated among the PrOs in proportion to the work accomplished and the tax will accrue to the respective municipalities where the PrOs are located.²⁶

Case 12: Tax Situs on Contractors

Representation: The Municipality of San Manuel, Pangasinan has claimed that China CAMC Engineering Co., Ltd. (CAMCE) has a PrO in the Municipality. To support its claim, the municipality attached photographs of the site where the project is taking place, including offices, yards, motor pools and other facilities.

Issue: Whether or not the Municipality of San Manuel can collect LBT from CAMCE.

²³ BLGF Opinion, December 16, 2010.

²⁵ Contractors include persons not subject to professional tax under Section 139 of the LGC, whose activity consists essentially of the sale of all kinds of construction services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such construction contractor or his employees. See DOF-Local Finance Circular No. 3-95.

²⁶ DOF-BLGF Opinion, March 4, 1998.

BLGF Opinion: Yes. The term "PrO", as applied to contractors shall mean the office or headquarters used in administering the project or construction being undertaken in pursuit of the business. However, it may not be a fixed place where administrative work is conducted as the term "office" usually connotes, but one that may be transferred from one project site to another. On the basis of the photographs on the site submitted there is no doubt that CAMCE maintains a PrO in the project site. In this connection, Section 150(b)(3) of the LGC, as implemented under Article 243(b)(3) of the IRR shall apply. Stated otherwise, 70% of the gross receipts recorded in the PO shall be taxable by the municipality of San Manuel where the PrO is located.²⁷

A compilation of additional cases referred to the BLGF are presented in **Appendix A**.

IV. COMMENTS AND OBSERVATIONS

A. Issues on Situs of the Tax Rules

1. Section 150 of the LGC, as amended, provides situs rules on only five (5) cases as follows:

- a. **Rule 1:** In case of businesses maintaining/operating a B/SO, the sale or transaction shall be recorded in the B/SO and the tax shall accrue and be paid to the municipality/city where the B/SO is located.

In general, the situs of the tax adopts the venue of the sales as the determining factor in the payment of the LBT. Thus, the sales made by the B/SO are recorded and the tax paid in the city/municipality where such B/SO is located. However, this Rule poses inequity between the LGUs hosting the PO, F, PrO or PL and the LGU hosting the B/SO. It may be argued that allocating 100% of the sales to B/SO to the exclusion of the LGUs hosting the PO, F, PrO or PL deprives the latter of the needed revenues albeit the fact that they provide services to these business units and suffer negative externalities produced by these business units. Thus, it is not surprising to have a number of cases where the LGUs hosting other business units seek to have a share in the LBT from the sales made by the B/SO outside their territorial jurisdictions. For instance, in Case 1, all sales made by the B/SOs are recorded in the B/SOs and the tax is paid in the LGUs where these B/SOs are located while the LGU where the PO and manufacturing plant are located does not get a share at all. It is thus unfair for this LGU.

- b. **Rule 2:** Where there is no B/SO in the city/municipality where the sale is made, the sale shall be recorded in the PO and the tax shall be paid to such city/municipality.

²⁷ BLGF Opinion, April 23, 2012.

Similar to Rule 1, this Rule also poses inequity where the LGUs not hosting the PO and no B/SO are seeking to have an allocation of the LBT especially if the business is situated in their localities. For instance, in Cases 5 and 6, the LGUs hosting the business of leasing properties do not get a share in the LBT on lessors because the BLGF opined that the leased real properties may not be considered as F, PrO or PL. Since the LGUs have no B/SOs, they do not get a share in the LBT collection.

Pimentel, Jr. opined that when there is no B/SO in the city or municipality where the sale or transaction is made, the sale shall be recorded only in the PO but the tax shall accrue to the city or municipality where the sale or transaction is made.²⁸ He deemed that the IRR and BLGF opinions depart from the letter of the law. It is worthy to note that in sentence or phrase construction, the use of the words “such city or municipality” would only mean to refer to a prior mention of the city or municipality. In the paragraph at issue, the only city or municipality mentioned is that where the sale or transaction is made. Hence, only the recording will be done in the PO but the tax will accrue to the city or municipality where the sale was made. In addition, it is generally recognized and accepted principle that the situs of a business transaction, such as the sale of merchandise, is the place where the act or transaction is performed.²⁹

- c. **Rule 3:** In the case of manufacturers, contractors, producers, and exporters having F, PrO, Plant or PL, the following sales allocation shall be observed:
- i. 30% of sales recorded in the PO shall be made taxable by the city/municipality where the PO is located
 - ii. 70% shall be taxable by the city/municipality where the F, PrO, plant or PL is located.

This is an equitable situs rule since it allows the LGUs hosting the F, PrO, Plants or PL to share in the LBT from the sales recorded in the PO. This rule is specifically designed to address the common complaint among LGUs against the practice of allowing business enterprises to pay their taxes in the LGUs where the PO is located even if they earn most of their income from the operations in the provinces, cities or municipalities

²⁸ Aquilino Q. Pimentel, Jr. in his book entitled, “The Local Government Code of 1991: The Key to National Development” commented that if the business concerned has no branch office or sales outlet, the sale or transaction shall be recorded in the place where the principal office of the said business is located. The taxes, however, shall accrue and be paid to the municipality (or city) where the sale or transaction was made, pp.272-273.

²⁹ Crescencio P. Co Untian, Jr. 2009, Tax Digest, A Bar Reviewer on National Internal Revenue Taxes, Local & Real Property Taxes, Tariff and Customs Duties, Fourth Edition, pp.290-291.

outside of their PO. Thus, LGUs hosting the F, PrO and PL of a business enterprise will have a 70% share of the sales recorded in the PO since these business units utilize/exploit the land, roads, bridges and other facilities of the LGUs, as well as avail of the services rendered by the former.

In Case 10, the LGU which hosts the mining operations of the mining company gets 70% share in the sales recorded in the LGU where PO is located. Similarly, in Case 11, various municipalities where the PrOs are located get prorated shares in the 70% of gross receipts recorded in the PO. In these two (2) cases, the LGUs which host the mining operations and PrOs are given 70% share in the sales recorded in the PO. But this is not the case in Cases 5 and 6 where the LGUs hosting the leased properties do not get a share.

- d. **Rule 4:** In the case of a PL which is located in a place other than the place where the F is located, the 70% portion in Rule 3 will be divided as follows:
- i. 60% to the city/municipality where the F is located; and
 - ii. 40% to the city/municipality where the PL is located.

This Rule allows the allocation of 70% of the sales recorded in the PO to the PL and F if both are located in different LGUs. Again, this is designed to make the LBT equitable. In Case 8, however, the BLGF opined that the term PL is limited only to a track of agricultural land planted to trees or seedlings and inland fishing ground and does not mean to include the source of raw materials. The LGUs hosting the source of raw materials is at a disadvantage since they assume negative externalities without any equivalent revenue.

- e. **Rule 5:** In the case of two or more Fs, PrOs or PLs in different localities, the 70% shall be prorated among the localities where the Fs, PrOs, or PLs are located in proportion to their respective volume of production.

This Rule prescribes the allocation of the 70% sales made by the PO based on the volume of production if there are two or more Fs, PrOs or PLs in different localities. It is envisioned to equitably distribute the revenue to the LGUs hosting the Fs, PrOs, or PLs of the business enterprises.

In Case 9, the LGU where the PO is located gets a 30% share from all sales recorded in the PO while the 70% share is prorated between two LGUs on the basis of the respective volume of production of the Fs located therein.

2. Based on the above cases, it is noted that there may be a need to revisit the situs rules to ensure that the LGUs hosting other business activities get their fair share in the LBT collection. It is also noted that the situs rules are not broad enough to cover other types of business units. For instance, in Case 2, the BLGF opined that depots which accept orders from customers are also considered as B/SOs. Hence, sales made by the depots should be recorded in their respective books of accounts and 100% taxable in the LGU where they are located. A depot as a common operating business unit is not specifically indicated in the situs rules. Regional and provincial offices are likewise not included.

3. For clarity, depots, regional and provincial offices and other operating business units should be considered in any attempt to amend the provisions on situs of taxation. Also, as shown in the queries referred to the BLGF, it is possible that companies may have various combinations of business units operating all over the country; hence, there should also be rules for such.

B. Other Issues Related to Situs of Taxation

1. With regard to the allocation of sales, it is deemed that LGUs hosting Fs, PLs, PrOs, etc. may not be able to determine the amount of sales that should have been allocated to each of them unless the PO (where all sales are recorded) which may be located in another LGU reports/declares them to the concerned LGUs. There appears to be no formal monitoring or networking system among the LGUs with regard to determining the sales allocation and the existence of other activities/operations of a particular business in other localities as well as reported gross sales/receipts of businesses.

2. There may also be difficulty on the part of the LGUs in establishing/verifying the true amount of gross receipts/sales declared or submitted to them by the businesses. This could be due to limited technical ability of treasury personnel to analyze books/records/documents.

3. There are also some cases where the type of business registered is not the real business operation as noted by some local treasurers. For instance, a warehouse which accepts orders/sales is registered by a company as a “private warehouse”.

4. The lack of technical ability of treasury personnel is also aggravated with the emergence of “virtual organizations”³⁰. Said organizations operate with the support of extensive computer networks, and are able to work across large geographic distances.

³⁰ Defined as, “an organizational structure or social network of people interacting or communicating primarily using electronic methods.” See <http://www.seanet.com>.

Referring to business, it is “any pattern of organization based around distributed physical, human and knowledge resources, and (most usually) tied together via information technology systems that enable such resources to perform value-added activities. Today, most virtual organizations will involve people linked by computer and telecommunications networks such as the Internet or an intranet, and which permit them to run groupware and other applications.” See <http://www.nottingham.ac.uk>.

With the complex nature/structure of their operations, the LGUs may have difficulty verifying the authenticity of documents/accounts/records submitted to them by these organizations.

5. On the other hand, some businesses may take advantage of the lower rates imposed by some LGUs where some of its business units operate. Thus, it may overstate its sales in the said LGUs to the disadvantage of the other LGUs which impose higher LBT rate.

6. The above issues may also be taken into consideration in any future revision of the situs rules. It is worthy to mention that there are pending proposals in the Senate of the Philippines to amend Section 150 or the situs of the tax. Specifically, Senate Bill (SB) 782³¹ proposes a 100% share of all sales or transactions to LGUs maintaining or operating branch or sales outlet, factory, project office, plant or plantation so long as such sales or transactions occur in the LGUs concerned. On the other hand, SB 222³² and SB 1771³³ seek to reduce the sales allocation of the city or municipality where the PO is located from 30% to 10% and increase that of the city or municipality where the F, PrO, Plant or PL is located from 70% to 90%.

V. CONCLUSION AND RECOMMENDATIONS

The situs rule under the LGC and its IRR is intended as a mechanism for equitable distribution among local governments of revenue from the business tax. However, the attainment of this objective is hindered by the fact that most LGUs lack the expertise in monitoring the transactions of businesses within their jurisdictions. In this case, it is suggested that treasury personnel undergo intensive hands-on training on how to analyze the declarations submitted by the businesses, i.e., comparing the previous and current years' declaration of gross receipts, and/or projecting how much income the business can generate in a given period. The LGUs may coordinate with the Philippine Tax Academy and the BLGF to design and conduct auditing skills enhancement trainings to capacitate local treasurers in the examination of books of accounts of LBT taxpayers.

LGU personnel should also strictly require businesses to furnish them a copy of the tax declarations filed with the BIR. It is further recommended that the LGUs review their business permit forms and to consider including therein some information that are useful in capturing the situs of the tax such as the number of factories, sales office, etc., and their

³¹ Entitled, "An Act Rationalizing Local Taxation Amending for that Purpose Section 150, Chapter I, Title 1, Book II of Republic Act No. 7160, As Amended, Otherwise Known as the Local Government Code." Introduced by Senator Francis G. Escudero.

³² Entitled, An Act Amending Section 150 of RA 7160, Otherwise Known as the "Local Government Code of 1991", introduced by Senator Vicente C. Sotto III.

³³ Entitled, "An Act to Enhance the Taxing Powers of Local Government Units by Amending Certain Provisions in Book II of Republic Act 7160, Otherwise Known as the Local Government Code of 1991", introduced by Senator Juan Edgardo "Sonny" M. Angara.

location. These pieces of information would also be very helpful in cross-checking and assessing the tax due of the businesses. It is also suggested that an information handbook containing illustrations on how sales should be allocated between host LGUs be made available and widely disseminated to serve as reference for LGUs and the taxpayers.

The LGUs may also adopt the use of the presumptive income level assessment approach (PILAA), audit program prioritizing businesses that pay low LBT as compared to their assets or sales, conduct of a periodic census of business establishments or the preparation of a comprehensive tax roll of businesses as tools to carry out the situs of the tax provision under the LGC effectively. These practices could be made more effective if undertaken with the help of component barangays. In the case of PILAA, this can be done by projecting annual sales/receipts by estimating daily, weekly or monthly income or by providing automatic increase to the gross receipts/sales over that of the previous year. However, it is worthy to note that the PILAA can be used in computing the LBT only if the taxpayers are unable to provide proof of their gross sales or receipts and its use in estimating the gross sales or receipts is provided in a valid local tax ordinance.³⁴

The LGUs should also plan and allocate their limited manpower to be able to conduct periodic inspection of business establishments. The importance of the verification of the type of business registered as well as the function of the business unit established in the LGU through an inspection cannot be overemphasized. It is through this process that the Treasurer's Office could ensure that it is collecting the correct amount of tax from their taxpayers.

It is likewise recommended that the BLGF facilitate and encourage the coordination and sharing of information between treasurers of various LGUs with business units locating in their respective jurisdictions.

Lastly, the BLGF should issue concrete guidelines to operationalize the sales allocation scheme as provided in Section 150 or the situs of the tax rules. Said guidelines should be able to address various cases/queries seeking BLGF's opinions/rulings related to said situs rule. It should also provide clear and uniform procedures of reporting of annual sales/receipts recorded at the head office. For this purpose, new forms may be devised.



³⁴ Bureau of Local Government Finance Memorandum Circular No. 01-001-2017, entitled, "Reminders in the Assessment of the Local Business Tax, Registration and Renewal of Business Permits and Licenses and Payment of Community Tax, issued on 5 January 2017.

Appendix A. ADDITIONAL SAMPLE CASES ON THE SITUS OF THE TAX REFERRED TO THE BLGF

Case A: Tax Situs on Business with PO and with Different B/SO

Representation: BRL Food Service Management, Inc. (BRL) has a PO of in Pasig City, where the F that manufactures empanadas is located. Its B/SO are located in different cities and municipalities where the empanadas are being sold that issue the corresponding receipts to customers.

Pasig City requires BRL to declare seventy percent (70%) of its sales as basis for the computation of business tax for the sole reason that the PO and F are located within their territorial jurisdiction.

Issue: Whether or not Pasig City is correct in requiring BRL to declare 70% of its sales as basis for the computation of business tax on the ground that the PO and F are located therein.

BLGF Opinion: No. Pursuant to Article 243(b)(1) of the IRR, 100% sales made by BRL through its different B/SO shall be taxable by the cities or municipalities where its B/SO are located. For Pasig to be able to claim the 70% allocation, recording of sales made in different B/SO will have to be made in BRL's PO in said City pursuant to the said Article 243(b)(3). Pasig City however, should collect the Mayor's permit and other regulatory fees imposed under its duly approved revenue code.³⁵

Case B: Tax Situs on Retailer

Representation: South Star Drug, Inc. (SSDI) is engaged in the business of retailing of pharmaceutical, medical, cosmetic and toilet articles and sell directly to the end users or consumers and not to resellers or small retailers. It represented that its PO is Pasig City but Mandaluyong City appears as its PO in its SEC registration. Later on, the amended Articles of Incorporation indicated that SSDI's PO is now in Camaligan, Camarines Sur. It has different B/SO nationwide and a Bicol Office (later on PO) in Camaligan which serves only as the cross-docking, transit point or stock transfer shipment for delivery to other regions in Region V. Bicol Office does not sell to end users or consumers. All sales are transacted at their various B/SO nationwide.

Issue: Whether or not the Municipality of Camaligan is entitled to the 30%-70% sales allocation.

BLGF Opinion: No. The basic rule in determining the situs of the LBT is where the transactions are made and recorded. SSDI's Office in Camaligan cannot be considered as S/BO as contemplated in the LGC. The facility is more of a "warehouse" where products are withdrawn for delivery to other B/SO covered by its operation but does not

³⁵ BLGF Opinion, September 8, 2014.

generate sales. The 30%-70% sales allocation under Section 150(b)(1) & (2) of the LGC shall not apply. "Retailer" is not among the entities included in the enumeration upon which the sales allocation may apply. For this reason, the Municipality of Camaligan cannot validly claim 30% sales allocation from gross sales or receipts realized by the B/SO of SSDI for lack of legal basis in the law.³⁶

Case C: Tax Situs of Display Centers

Representation: Filinvest Alabang, Inc. (FAI) is a domestic corporation engaged in the business of acquiring, developing and selling real estate properties. It has a joint venture agreement with Public Estates Authority for the development of a 244-hectare property known as the Filinvest Corporate City (FCC) in Alabang, Muntinlupa. FAI maintains an office at Makati City that serves only as a showroom, display area and documentation office of the project at the FCC. It neither issues invoices and receipts nor records sales transactions. These functions are done at their B/SO and PO in Muntinlupa.

Issue: Whether or not FAI is liable to pay LBT in Makati City considering a showroom, display area and documentation office of the project at the FCC are located therein.

DOF-BLGF Opinion: No. Since FAI's B/SO and PO are both located in Muntinlupa, the sales made by the B/SO and PO will be 100% taxable therein. In the case of Makati City where the display center is situated, it will not be entitled to a share in the taxable gross receipts of FAI since the display area is not engaged in sales transactions. However, Makati City may require FAI to pay the Mayor's permit and regulatory fees for maintaining said display area in the locality.³⁷

Case D: Tax Situs of Route Trucks, Vans and/or Other Vehicles

Representation: Nestle Philippines, Inc. (NESTLE) maintains a B/SO in the Municipality of San Nicolas, Ilocos Norte and distributes its products in Laoag City and other nearby municipalities in the said province.

Issue: Whether or not the RS made by NESTLE should be allocated between San Nicolas and Laoag City.

DOF-BLGF Opinion: No. Pursuant to Article 243(d)(2), RS made in a locality where the business has no B/SO or WH should be recorded in the B/SO or WH where the route trucks withdraw the products for sale. The tax will be due and 100% payable to the LGU where the B/SO or WH is located.

Since NESTLE maintains a B/SO in San Nicolas, all sales should be recorded and 100% taxable therein. Moreover, since there are no other B/SOs or WHs located in the

³⁶ BLGF Opinion, April 10, 2013.

³⁷ DOF-BLGF Opinion, December 18, 1997.

areas where NESTLE distributes its products, the goods sourced from the said B/SO will be considered as RS and will be taxable only in San Nicolas. Laoag City may only collect an annual fixed tax for every delivery truck of NESTLE pursuant to an existing city tax ordinance.³⁸

Case E: Tax Situs on Developer of an Ecozone

Representation: Sarangani Resource Corporation (SRC) is a SEC-registered developer of ecozone with PO in Polomolok, South Cotabato. It appears that SRC engaged in the following:

1. Rent-a-car (Services) — exclusively with Dole Philippines — Polomolok
2. Forklift (Services) — exclusively with Dole Philippines — Polomolok
3. Real Estate Lessor — properties located in LGUs Polomolok, Tampakan, T'boli, Surallah and General Santos City

SRC has no B/SO in the abovementioned localities and most of their lots are under lease agreement with Dole Philippines (Polomolok), for 50 years.

Issues:

(1) Whether or not the Municipality of Polomolok is entitled to collect 100% taxes due on all sale/income recorded in the PO.

(2) Whether or not the Municipality of Polomolok is entitled to 70% of taxes due from sales/income derived from other LGUs.

BLGF Opinion: Yes. Pursuant to Article 243(b)(2) and considering the representations that SRC has no B/SO in Polomolok, Tampakan, T'boli, Surallah and General Santos City, all sales recorded in the PO shall be 100% taxable by Polomolok where the said PO is located. The 30%-70% allocation of sales does not apply in the case of SRC since there are no F, PrOs, or PL in locations other than where the PO is situated. Accordingly, and considering the representations made that no B/SO are located in the LGUs where the properties are located, all income derived as real estate lessor shall be recorded in the PO and shall be 100% taxable by Polomolok.

Case F: Tax Situs on Banks

Representation: Bank of Makati, Inc., (BMI) is a rural bank duly organized and existing by virtue of Philippine laws with PO in Makati City, while its branches and loan centers are located in various parts of the country. BMI offers a variety of loans such as personal, salary, consumer and motorcycle loans for the purpose of meeting the credit

³⁸ DOF-BLGF Opinion, 2nd Indorsement, September 14, 1998.

needs of its borrowers. As part of its retail loan strategy, BMI forged a partnership with its affiliate motorcycle dealers, namely: Motortrade Nationwide Corporation, Motorjoy and Honda Prestige (collectively known as "Dealers"), to extend credit to those who want to take out motorcycle loans.

Issue: Whether or not BMI is liable for the payment of LBT to the LGU where it has no B/SO but conducting financing activities which are recorded in the nearest B/SO.

BLGF Opinion: No. All transactions filed and negotiated in the B/SO shall be recorded in the B/SO and the gross receipts derived from the transactions shall be taxable in the LGU where the B/SO is located. Even if there are sales or transactions made in localities where there are no B/SO and the sales or transactions made thereat are recorded in the PO, the tax shall accrue to the locality where the PO is located. In this particular case, BMI is not required to register and pay the LBT in the LGU concerned where it (Bank) does not have or maintain a B/SO.³⁹

Case G: Tax Situs on Manufacturers with Independent Dealers

Representation: Sharp Phils. Corporation (SPC) is a domestic corporation engaged in the business of manufacturing and selling electronic products. Its PO and manufacturing plant is located in Muntinlupa City. SPC also sells products nationwide through its authorized dealers who purchased products from SPC's PO in Muntinlupa City. These purchases made by the dealers are dispatched from, invoiced, and recorded in Muntinlupa City.

Issue: Whether or not SPC is only liable for LBT in Muntinlupa City for its sale of products to its dealer nationwide and not in the city or municipality where its products may have been delivered.

BLGF Opinion: Yes. Under Section 150 of the LGC, in order for an entity to be liable for LBT in the city or municipality other than where its PO is located, certain conditions must be met:

- a. It must conduct the operations of the business as an extension of the PO; and
- b. The B/SO should likewise record the sale or transaction.

Considering that the sales made by SPC to its dealers nationwide are duly invoiced and recorded in Muntinlupa City where its PO is located, SPC is not liable for LBT in the city or municipality where its dealers operate. The second paragraph of Section 150 of the LGC provides that "[i]n cases where there is no such B/SO in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the PO and the taxes shall accrue and shall be paid to such city or municipality."⁴⁰

³⁹ BLGF Opinion, May 21, 2014

⁴⁰ BLGF Opinion No. 019-2016 CO-LFPS-PPPSD, August 3 2016.

Case H: Tax Situs on Administrative Office

Representation: Nestle Philippines, Inc. (NPI) is a domestic corporation with business operations throughout the country. It is engaged in the manufacture and sale of various products, such as dairy products, instant coffees and tea drinks and confectionery. Its PO is located in Cabuyao, Laguna. It has WH in Calamba, Laguna and Cagayan de Oro (CDO), where orders are accepted and processed. NPI has 2 administrative offices located in barangays of Singcang and Villamonte in Bacolod City. Said administrative offices serve purely as stations for NPI employees who coordinate its promotional activities and assist NPI distributors located in Bacolod which are separate and independent from NPI.

Issue: Whether or not NPI is liable to pay LBT to the City of Bacolod for maintaining administrative offices therein.

BLGF Opinion: No. The administrative offices in Bacolod do not fall within the definition of B/SO since no sales are made and no stocks are maintained thereat as products are withdrawn directly from the distribution centers in Calamba or CDO, and no delivery of products takes place nor are sales invoices issued thereat.⁴¹

Case I: Tax Situs on Tollway Operator

Representation: Tollways Management Corporation (TMC) is a sub-contractor of Manila North Tollways Corporation (MNTC). It operates and maintains the North Luzon Expressway (NLEX). It does not own any structure within the stretch of the tollways. Its PO is located in Caloocan City. TMC does not maintain an office, B/SO within the territorial jurisdiction of any LGU other than Caloocan City. However, it has an office at Guiguinto, Bulacan which is a mere support facility and does not do business in Guiguinto nor generate income on its own. All income derived by TMC from the operation and maintenance of NLEX is reported in its PO.

Issue: Whether or not TMC is only liable for LBT in Caloocan City.

BLGF Opinion: Yes. TMC shall be liable to the payment of LBT to Caloocan City where the PO is located, based on total taxable compensation that the company receives from its employer, MNTC, including but not limited to Base Fee, additional variable amounts and fees stipulated in the Agreement between the company and MNTC. TMC's total gross sales/receipts will include service fees and other similar fees or amounts it receives for services rendered in the operation of NLEX. LBT shall be payable only to Caloocan City where the PO is located and to the exclusion of other jurisdictions traversed by the NLEX.⁴²

⁴¹ BLGF Opinion, December 2, 2009

⁴² BLGF Opinion, April 16, 2010.

Case J: Tax Situs of Lessor of Movable Property

Representation: GE Philippines, Inc. (GE Phils) leases its reverse osmosis units (ROUs) to Shell Philippines (Shell) and Shell Philippines Exchanges (SPEX). In turn, Shell and SPEX are paying a fixed monthly service charge, which covers the rental, operation and maintenance of the ROUs. GE Phils has PO in Taguig City while the ROUs are located within the plant boundaries of Shell and SPEX in Batangas City. GE Phils. has three (3) employees assigned at the site for the operation and maintenance of the ROUs. All receipts relating to the ROUs are recorded at the PO in Taguig City.

Issues:

- (1) Whether or not GE Phils is liable for LBT in Batangas City for the lease of its ROUs to Shell and SPEX.
- (2) Whether or not ROUs owned and leased by GE Phils. to SHELL and SPEX can be considered a "Plant".

BLGF Opinion: No. Batangas City may not share LBT that GE Phils may be required to pay to Taguig City where its PO is located, for reason that GE Phils does not own the "plant" per se located in Batangas City.

The ROUs, which GE Phils owns and leases to Shell and SPEX are movable things which can be installed or removed anytime from Shell and SPEX premises (Plant), once the lease agreement expires. In this instance, GE Phils is considered a "lessor" rather than "owner" or "operator" or a "plant".

In view hereof, the gross receipts received by GE Phils from Shell and SPEX representing the monthly lease rentals for its ROUs shall be taxable by Taguig City where GE Philippines' PO is located to the exclusion of Batangas City.⁴³

Case K: Tax Situs on a Business with Principal Office but Sales are Recorded in the Factory (Plant)

Representation: TNC Chemicals Phils., Inc. (TNC) has a PO in Makati City and with a F in Calamba City. All sales transacted by TNC were consummated and recorded in Calamba City F. In fact, no part of the sales was declared in Makati City BIR Revenue District Office No. 049 for taxation purposes other than for the registration of TNC's business activity in the City of Makati.

Issue: Whether or not Makati City is entitled to the 30%-70% sales allocation for LBT.

BLGF Opinion: No. All sales transactions made and recorded in Calamba City shall be 100% taxable thereat. Makati City may not avail of the 30% sales allocation

⁴³ BLGF Opinion, November 27, 2009.

unless it can prove that there are sales transactions recorded in TNC's PO thereat and for which it is entitled to such share.⁴⁴

Case L: Tax Situs on Business with PO, B/SO and Site Office in Different LGUs

Representation: Philippine Estates Corporation (PHES) is a duly registered domestic corporation with PO in Pasig City, a B/SO in Cebu City and a site office in Lapu-Lapu City. Cebu City office regularly performs marketing and coordination with buyers and agents; administration of delegated functions and inventory in coordination with PO; land management in coordination with PO; processing of titles in coordination with PO; liaison activities with different government agencies, brokers, agents and other third parties; and, management of the property or inventory of the project and appropriate endorsement of requests from client/s to the PO. The books of accounts are maintained by the PO, while official receipts are also registered at the PO of the Corporation.

Issue: Whether or not Cebu City office is liable to pay LBT.

BLGF Opinion: No. Considering the limited functions of PHES's Office in Cebu City, it appears that no sales are made and recorded at the said office, hence, there is no basis for the imposition of the LBT. However, under Article 243(a)(2) of LGC's IRR, similar to a WH a liaison/administrative office that accepts orders and receives collections shall be considered as a B/SO. In such cases, a liaison/administrative office shall be subject to the payment of the LBT base on the 70%-30% sales allocation pursuant to Section 150(b), (1) and (2), shall apply to Lapu-Lapu City and Pasig City where the site office and PO are located, respectively. On the other hand, the 60%-40% allocation from the 70% shall not apply to Cebu City considering that a liaison/administrative office is not among those mentioned in the law and the IRR such as a F or PL, which is entitled to an allocation of the tax.⁴⁵

Case M: Tax Situs of a Manufacturer with no B/SO and where the PO and Manufacturing facilities are Located in Different LGUs

Representation: Philko Peroxide Corporation (PPC) is a manufacturer, processor and seller of high concentrated and diluted hydrogen peroxide. Its manufacturing facilities are located in Malolos, Bulacan while the PO which performs administrative and accounting functions and where the sales are transacted and recorded is in Makati City.

Issue: Whether or not PPC is correct in allocating 70%-30% of the gross receipts between Malolos and Makati City for purposes of the LBT.

DOF-BLGF Opinion: Yes. Pursuant to Section 150(b) of the LGC, the annual LBT of PPC should be allocated between Malolos and Makati at a ratio of 70% and 30%, respectively. Since PPC has no B/SO, 30% of the gross receipts recorded in its PO in

⁴⁴ BLGF Opinion, April 10, 2015.

⁴⁵ BLGF Opinion, November 24, 2010.

Makati will be taxable in said City and the remaining 70% in Malolos where the manufacturing facilities are located.⁴⁶

Case N: Tax Situs on Contractors with PO and PrOs in Different LGU

Representation: City Limits Properties, Inc. (CLPI) is a real estate developer with PO in Manila while its condominium project is situated in Pasay City.

Issue: Whether or not CLPI will have to allocate the payment of LBT to the Manila and Pasay City.

BLGF Opinion: Yes. All transactions recorded in Manila is 30% taxable in Manila where the principal office is located and 70% taxable by Pasay where the condominium project is located. Both cities (Manila and Pasay) may collect Mayor's permit and other regulatory fees.⁴⁷

Case O: Situs of Taxation of Company's Personalization Site

Representation: Gemalto Philippines, Inc. (GPI) is a corporation established and existing under and by virtue of the laws of the Philippines, primarily engaged in the sale of generic cards booked under "sales of goods" and the personalization and sale of cards booked under "sale of services". Its PO is located in Makati City, but it has a Personalization Site where GPI assigns personnel for purposes of personalizing cards in Calamba City. All sales of goods and services are recorded in the Makati PO. There is no B/SO in the Calamba site, neither does it issue any invoices or receipts. The Personalization Site is not a B/SP, F, PrO, or PL, as defined by the LGC and relevant laws.

Issue: Whether or not GPI's Personalization Site in Calamba City can be considered a B/SO, F, PrOs, or PL for purposes of LBT.

BLGF Opinion: Yes. The Personalization Site located in Calamba City is considered a manufacturing plant or F. As such, 30% of all sales recorded in the manufacturing and distribution of personalized cards shall be taxable in Makati City where the PO is located, and 70% of all sales recorded shall be taxable by Calamba City where the manufacturing plant is located.⁴⁸

⁴⁶ DOF-BLGF Opinion, April 9, 2003.

⁴⁷ BLGF Opinion, January 13, 1993.

⁴⁸ BLGF Opinion, December 22, 2016.

Case P: Tax Situs of a Buying Station

Representation: Philip Morris Fortune Tobacco Corporation (PMFTC) is a domestic corporation engaged in the manufacture and sale of various tobacco products, with PO located in Marikina City, has two (2) F located in Marikina City and Tanauan City, and operates various B/SO and WH throughout the country. PMFTC operates in the Municipality of Claveria, Misamis Oriental a buying station with curing facility that (i) buys tobacco leaves from farmers, (ii) cures the tobacco leaves, and (iii) transfers the cured tobacco leaves to its facility in Vigan City. PMFTC also provides farm inputs (e.g., fertilizers, pesticides, etc.) as advance purchase price to planters/farmers who agreed beforehand to sell their tobacco leaves to PMFTC.

Issue: Whether or not PMFTC is liable to pay LBT for operating a buying station with curing facility and for providing advance purchase price to farmers in the form of farm inputs.

DOF-BLGF Opinion: No. The absence of a gross sales or receipts of a business will render any assessment for LBT illegitimate for lack of legal basis. In order for the sale to be recorded and be subject to LBT in the city or municipality other than where the PO is located, the taxpayer should have a B/SO in such city or municipality, where a sale or transaction is made. Accordingly, inasmuch as the buying station only buys tobacco leaves from farmers, and then transfers the processed leaves to its facility in Vigan City, PMFTC cannot be subject or be liable to pay any LBT to the said municipality. The monetary value of farm inputs forms part of the payment of tobacco leaf to the farmers. PMFTC should be able to substantially prove that the monetary value of farm inputs are indeed deduced from the purchase price; otherwise, PMFTC is considered engaged in business as a distributor of someone else's products, who may be also engaged as a manufacturer of tobacco products.⁴⁹

⁴⁹ BLGF Opinion No. 041-2016 CO-LFPS-PPPSD, dated 28 December 2016.