

[BIR REVENUE MEMORANDUM CIRCULAR NO. 18-2002, MAY 24, 2002, May 24, 2002]

INTERPRETATION OF THE PERTINENT PROVISIONS OF SECTION 140 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 BY THE SUPREME COURT OF THE PHILIPPINES UNDER G.R. NO. 145275

For the information and guidance of all revenue officials, employees and others concerned, quoted below is Sec. 140 of the National Internal Revenue Code (NIRC) which in pertinent part provides:

"xxx Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stem or midribs, and sweepings of tobacco may be sold in bulk as raw material by one manufacturer directly to another without payment of the tax, under such conditions as may be prescribed in the rules and regulations prescribed by the Secretary of Finance."

The Supreme Court, in interpreting the above provision of law, in the case of CIR vs. La Campana Fabrica de Tabacos, Inc., (G.R. No. 145275 promulgated on November 15, 2001), held that:

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"We agree with the petitioner that the exemption from specific tax of the sale of stemmed leaf tobacco as raw material by one L-7 directly to another L-7 is because such stemmed leaf tobacco has been subjected to specific tax when an L-7 manufacturer purchased the same from wholesale leaf tobacco dealers designated under Section 3, Chapter I, Revenue Regulations No. 17-67 (supra) as L-3, L-3F, L-3R, L-4, or L-6, the latter being also a stripper of leaf tobacco. These are the sources of stemmed leaf tobacco to be used as raw materials by an L-7 manufacturer which does not produce stemmed leaf tobacco. When an L-7 manufacturer sells the stemmed leaf tobacco purchased from the foregoing suppliers to another L-7 manufacturer as raw material, such sale is not subject to specific tax under Section 137 (now Section 140), as implemented by Section 20(a) of Revenue Regulations No. V-39.

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In view of the said Supreme Court decision, all removals of stemmed leaf tobacco by leaf tobacco dealers (i.e. L-3, L-3 ¼, L-3R, L-4, L-6) are subject to the specific tax of P0.75 per kilogram imposed under Section 144 of the NIRC, in addition to the inspection fee imposed under Section 146 of the same Code. However, removals of said leaf tobacco product by an L-7 (a manufacturer of tobacco products), for delivery to another L-7 shall be exempt from such specific tax pursuant to the said Supreme Court decision.