

**[ BIR REVENUE MEMORANDUM CIRCULAR NO. 59-  
2005, October 21, 2005 ]**

**CLARIFICATION ON THE TAX TREATMENT OF PETROLEUM  
PRODUCTS SOLD TO INTERNATIONAL MARINE VESSELS**

This Circular is issued to clarify the guidelines and rulings laid down in BIR Ruling No. DA 427-2004 dated August 10, 2004 and BIR Ruling No. 001-2004 dated January 12, 2004, on the excise tax consequence affecting petroleum products sold to international marine vessels.

SECTION 135 of the Tax Code of 1997 provides:

*"Sec. 135. Petroleum Products Sold to International Carriers and Exempt Entities or Agencies - Petroleum products sold to the following are exempt from excise tax:*

*"(a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;*

*"(b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and*

*"(c) Entities which are by law exempt from direct and indirect taxes."*

It has been ruled that to be entitled to exemption under Section 135 (a) quoted above from the payment of excise tax imposed under Section 148 of the Tax Code, (1) the petroleum products must be sold to an international carrier for its use and consumption outside the Philippines; and (2) that the country of said carrier exempts from payment of excise tax petroleum products sold to Philippine carrier. (BIR Ruling No. DA 427-2004)

While it has also been ruled that the requirement for direct sale of petroleum products to international marine vessel, in order to qualify for excise tax exemption, is not expressly provided for by the aforementioned provisions of the Tax Code, the excise tax exemption on removals intended for delivery to international marine vessel is not considered absolute. Such transaction is treated only as conditionally tax-exempt removal subject to certain administrative requirements in order to prevent any tax leakage arising from possible diversion of delivery of petroleum products to unqualified entities.

In connection therewith, the following conditions shall be strictly complied with on the sale of petroleum products to international marine vessels in order to avail of the said excise tax exemption under Section 135 (a) of the Tax Code:

1. The petroleum products covered by this Circular shall be limited to bunker fuel, special fuel oils, and diesel fuel that are used by the international marine vessels for their own fuel consumptions outside the Philippines;
2. The excise tax on these petroleum products shall not be billed or passed on by the manufacturers or oil refiners to the international marine vessels;
3. The petroleum products are sold, directly or through an oil broker, to an international marine vessel. For this purpose, the term "oil broker" shall be limited to a middleman who acts for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern: he is, in more ways than one, an agent of both parties. His task is to bring the parties together and to get them to come to an agreement. A basic characteristic of the broker is that he acts not for himself, but for a third person, regardless of whether the fee paid to him can be performed by the principal or not (*Nichimen Corporation vs. Court of Appeals*, G.R. No. 139674, 06 March 2003). Furthermore, a broker is one who is engaged for others in the negotiation of contracts relative to property with the custody of which they have no concern. He acts as a negotiator in bringing other persons together to bargain; generally, he ought not to sell in his own name, has no implied authority to receive payment, is not entrusted with the physical possession of the principal's goods when engaged to buy or sell, and has no special property therein or thereon (8 Am Jur. 889-890, cited in *Philipp Brothers Oceanic, Inc. vs. The Commissioner of Internal Revenue*, CTA Case No. 3140, 08 March 1984);

The excise tax exemption herein may be availed of though the sale is made through other intermediary party/ies like traders provided that their roles are limited to that of a broker as defined herein, and as long as they also comply with the requirements of this Circular.

4. The international marine vessel shall utilize such petroleum products for their exclusive use or consumption outside the Philippines (Section 135 (A) of the Tax Code of 1997);
5. The country of registry of the international marine vessel to whom the petroleum products are sold also exempts from a similar tax the petroleum products sold to Philippine-registered international marine vessels (Section 135(B) of the Tax Code of 1997; Section 2 of Revenue Regulations No. 13-77 as amended by Revenue Regulations No. 5-78);