

[KRI REVENUE MEMORANDUM CIRCULAR NO. 37-93, July 01, 1993]

RECLASSIFICATION OF CIGARETTE SUBJECTS TO EXCISE TAX

In view of the issues raised on whether HOPE, MORE and CHAMPION cigarettes which are locally manufactured are appropriately considered as locally manufactured cigarettes bearing a foreign brand, this Office is compelled to review the previous rulings on the matter.

Section 142 (c)(1), National Internal Revenue Code, as amended by R.A. 6956, provides:

"On locally manufactured cigarettes bearing a foreign brand, fifty-five percent (55%) Provided, That this rate shall apply regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern."

Under the foregoing, the test for imposition of the 55% ad valorem tax on cigarettes is that the locally manufactured cigarettes bear a foreign brand regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. The brand must be originally owned by a foreign manufacturer or producer. If ownership of the cigarette brand is, however, not definitely determinable, "x x x the listing of brand manufactured in foreign countries appearing in the current World Tobacco Directory shall govern. x x x"

HOPE is listed in the World Tobacco Director as being manufactured by (a) Japan Tobacco, Japan and (b) Fortune Tobacco, Philippines. MORE is listed in the said directory as being manufactured by: (a) Fills de Julia Reig, Andorra; (b) Rothmans, Australia; (c) RJR-Macdonald, Canada; (d) Rettig-Strenberg, Finland; (e) Karellas, Greece; (f) R.J. Reynolds, Malaysia; (g) Rothmans, New Zealand; (h) Fortune Tobacco, Philippines; (i) R.J. Reynolds, Puerto Rico; (j) R.J. Reynolds, Spain; (k) Tabacalera, Spain; (l) R.J. Reynolds, Switzerland; and (m) R.J. Reynolds, USA. CHAMPION is registered in the said directory as being manufactured by (a) Commonwealth, Bangladesh; (b) Sudan, Brazil; (c) Japan Tobacco, Japan; (d) Fortune Tobacco, Philippines; (e) Hagggar, Sudan; and (f) Tabac Reunies, Switzerland.

Since there is no showing who among the abovelisted manufacturers of the cigarettes bearing the said brands are the real owner/s thereof, then it follows that the same shall be considered foreign brand for purposes of determining the ad valorem tax, pursuant to Section 142 of the National Internal Revenue Code. As held in BIR Ruling No. 410-88, dated August 24, 1988, "in case where it cannot be