

PROCEDURES AND REQUIREMENTS FOR OVERSEAS DONATIONS

REGULATIONS

Philippine laws and regulations allow tax and duty exemption privileges for certain donations from overseas.

1. The Tariff and Customs Code of the Philippines (Presidential Decree No. 1464), as amended, provides for exemption from the payment of import duties for the following items:

- "Imported articles donated to, or for the account of, any duly registered relief organization, not operated for profit, for free distribution among the needy". A certification by the Department of Social Welfare and Development (DSWD) or the Department of Education, Culture and Sports (DECS), as the case may be, would be required. [Section 105 (l)]

- Books and publications certified by DECS as intended for economic, technical, vocational, scientific, philosophical, historical, or cultural purposes, or those covered by the International Agreement on Importation of Educational Scientific and Cultural Materials or other agreements binding upon the Philippines [Section 105 (s)]. Included in this exemption are bibles, missals, prayer books, Koran, Ahadith and other religious books of similar nature.

- Those items that may be granted by the President of the Philippines upon the recommendation of National Economic and Development Authority in the interest of national economic development. [Last paragraph of Section 105]

- Those items granted to government agencies, instrumentalities or government-owned or controlled corporations under the provisions of existing contracts, commitments, agreements, or obligations (requiring such exemption) with foreign countries. [Last paragraph of Section 105]

2. Section 109 (y) of the National Internal Revenue Code of 1997 exempts from the value-added tax the "sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements".

3. Presidential Memorandum Order No. 36, s. 1992 also authorizes the "importation and

donation of food, medicine and equipment for use in the government relief and rehabilitation programs for calamity affected areas". Endorsement would be required from the Department of Social Welfare and Development for relief items, the Department of Health for medicines, and the Department of National Defense for rehabilitation equipment. The Office of the President issues the necessary clearances for donations under this facility, which will serve as basis for the Bureau of Customs to process and release the donation.

4. Diplomatic Notes No. 1071 of the US Embassy and No. 3001 of the Department of Foreign Affairs provide that the Philippine government will accord duty-free entry into the Philippines, as well as exemption from internal taxation, of supplies of goods approved by the US government, donated to or purchased by the United States voluntary, nonprofit relief and rehabilitation agencies qualified under United States government regulations, and consigned to such organizations, including branches of these agencies in the Philippines which have been approved by the Philippine government.

5. Article XIV Section 4(4) of the Philippine Constitution provides that "subject to conditions prescribed by law, all grants endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax".

CONDITIONS FOR DUTY-FREE IMPORTATION

Donations from abroad may qualify for duty exemption depending on the donee/consignee or recipient, and the nature of the item to be donated.

1. The specified donee/consignee or recipient must be qualified to receive donations on a tax or duty free basis.

2. The items to be donated may be recommended for duty-free entry provided they are:

- Directly required or necessary in the religious, charity, medical or training activities of the donee/consignee, and should contribute to the promotion of rural or regional development, generation of employment, and strengthening of health services or moral values, and other socio-economic development;

- Essential machinery and equipment, including its spare parts and accessories, as defined under NEDA Rules and Regulations;
- Not contraband, prohibited, regulated or restricted under existing laws (i.e., motor vehicles, clothing, tires), except those necessary for the promotion of public health and safety; and
- Not locally available and with no local substitutes as certified by the Board of Investments. However, in case of local availability, the importation may still be recommended for duty-free treatment if it satisfies the foregoing conditions, in addition to which the BOI should interpose no objection to granting of duty exemption.

Note: Certification for duty-free importation is made on a per shipment basis to ensure that each request satisfies the policy guidelines of NEDA.

QUALIFIED RECIPIENTS

The following organizations and entities may qualify for duty free importation of donations:

- Non-profit, welfare, and charitable organizations which have been in operation for at least six (6) months and are licensed or accredited by DSWD;
- Non-stock, non-profit educational and training institution duly registered under Philippine laws and operated exclusively for educational purpose, maintained and administered by private individuals or groups, offering formal education, and issued permit to operate by DECS in accordance with existing laws and regulations;
- Educational, scientific, and cultural institutions or societies, and similar organizations duly approved by competent authorities such as DECS and the United Nations Educational, Scientific and Cultural Organization (UNESCO) National Commission of the Philippines;
- Other non-profit religious and/or charitable institutions registered with the Securities and Exchange Commission, except private individuals and civic, service, cultural, and scientific organizations or foundations;
- Government hospitals duly registered and licensed to operate by DOH as provided for in Republic Act 4226 or the Hospital Licensure Act;
- Private primary and secondary hospitals duly registered and licensed to operate by DOH as provided for in Republic Act 4226;
- Government departments, offices, and agencies, including local government units, except government-owned and controlled corporations;
- Duly registered cooperatives certified by the implementing government agency concerned as deserving such incentive; and
- Other organizations covered by bilateral or international agreements to which the Philippines is a signatory, and by Presidential decrees and other special laws.

ITEMS WHICH MAY BE IMPORTED

The following items donated from overseas may be allowed duty free entry:

- Books, publications and documents;
- Essential machinery and equipment, including its spare parts and accessories;

Note: Only non-profit religious and charitable (except civic and service) institutions, government agencies and hospitals, and private primary and secondary hospitals may be allowed to receive donated essential machinery and equipment including spare parts and accessories on a duty free basis.

- Essential consumer goods not available locally in times of calamities or fortuitous events;
- Food and food products, drugs and medicines and other pharmaceuticals having similar preparations registered with the Bureau of Food and Drugs (BFAD);

Note: No pharmaceutical product intended for donation will be accepted or distributed unless it is registered with BEAD, in accordance with the provisions of Republic Act 3720. All donated drugs issued clearance by BEAD are subject to strict monitoring by BEAD for intended usage.

- Medical equipment and devices;
- Relief goods for free distribution to the needy or to be used in evacuation centers, provided these are not in commercial quantity;
- Reagents for research purposes;
- Scientific instruments or apparatus intended exclusively for educational purposes or pure scientific research; articles for the blind; and visual and auditory materials and works of art and collectors pieces of education, scientific, and cultural character pursuant to the Florence Educational Scientific and Cultural Agreement adopted by the General Conference of UNESCO at Florence, Italy in 1950;

Important: Consumer items such as gas stoves, television sets, air conditioning units, refrigerators, office or home furniture, bicycles, towels, drapes / curtains, sheets, blanket, toys,

among others, are not considered priority items for economic development and therefore do not qualify for duty exemption.

The importation of textile articles commonly known as used clothing from any country of origin is absolutely prohibited. (Republic Act 4653, Customs Memorandum Order No. 14, s. 1986, DSWD Department Order No. 28, s. 1999).

REQUIRED DOCUMENTS

The following documents will be required in requesting for duty-free certification for incoming donations from overseas:

1. From the donor:

- Deed of donation duly authenticated by the Philippine Embassy or Consulate;
- Itemized list of donation (also referred to as packing list or inventory of donated items);
- Proforma invoice or commercial invoice (not required for used items); and
- Shipping documents (bill of lading or airway bill).

Important: The name listed as donee/consignee or recipient in the Deed of donation must be the same as that appearing in the shipping documents.

2. From the donee/consignee or recipient

- Letter of request for duty-free certification addressed either to the Department of Finance(DOF) or the National Economic and Development Authority (NEDA);
- Deed of acceptance of the donation;
- Distribution plan for the donation;
- Copy of SEC registration and Articles of Incorporation and/or By-laws, in case of non-stock, non-profit charitable or religious institutions requesting exemption from payment of duties for the first time;
- DSWD License to Operate and Certificate of Accreditation, if non-government

organization;

- Current and valid DOH License to Operate, if hospital.

ADDITIONAL REQUIREMENTS

The following additional documents would be needed, depending on the nature and type of the donation:

1. For essential machinery and equipment

- Product catalogue and/or technical description of products to be donated
- Certificate of registration for cooperatives or NACIDA-registered firms
- Endorsement of the Board of Investments

2. For books, magazines, newspapers and other periodicals

- Packing list indicating titles of books and Publications;
- Authority of representative (in lieu of donee);
- Duly notarized affidavit and deed of undertaking indicating that the donated articles shall be used actually, directly and exclusively for educational purposes and shall not be resold or transferred for material consideration; and
- Endorsement of Mabuhay Lane, Department of Finance

3. For computer equipment and other educational, scientific, and cultural materials

- Deed of undertaking indicating that the donated articles shall be used actually, directly and exclusively for educational purposes and shall not be resold or transferred for material consideration;
- DECS accreditation, if the recipient is an educational institution;
- UNESCO endorsement, if the recipient is a non-government organization; and
- Copy of BIR certificate, and international agreement or executive order allowing tax-exempt privileges, if applicable.

4. For medicines

- Distribution plan for medicines;
- Letter to the DOH-Bureau of International Health Cooperation (DOH-BIHC) requesting endorsement to BFAD for the issuance of clearance. The letter request should be submitted with the complete list of drugs and quantity to be donated, with the following information:

- o Generic name/brand name

- o Formulation (with English translation)

- o Dosage forms/strengths

- o Batch/lot number and expiration date (shelf life of at least 6 months upon arrival in the Philippines)

- o Name and address of manufacturer

- BFAD Certificate of Product Registration (CPR)

Note: The recipient or donee/consignee will need to coordinate with BFAD for the inspection and collection of samples for Lab Analysis prior to the issuance of the CPR or accelerated CPR.

5. For medical equipment capable of emitting radiation, such as X-ray and ultrasound equipment:

- Letter to the DOH-BIHC requesting endorsement to the Bureau of Health Devices and

Technology (BHDT) for the issuance of clearance. This document must be submitted with the following:

- o Complete brochure/literature about the equipment model
- o For X-ray equipment, a copy of the license to operate an x-ray facility issued by the BHDT
- o Name(s) and credentials of the person(s) who will operate the equipment
 - An import fee of P165.00 per unit will be paid to the BHDT upon approval of clearance

6. For food and other items

- Duly notarized distribution plan, confirmed by the local Social Welfare and Development Office and endorsed by the DSWD Field Office which will provide technical assistance on the utilization of specific shipment;
- Duly notarized distribution report on previous shipment (if any);
- Prior agreed/approved arrangements with DSWD Regional Office concerned on items other than food, medicines, and relief items;
- Letter to the DOH-BIHC requesting endorsement to BFAD for the issuance of clearance. The request is submitted with the complete list of food items and quantity to be donated, with expiration date of at least 6 months upon arrival in the Philippines;
- BFAD Certificate of Product Registration (CPR)

FILING OF APPLICATION

The donee/consignee or recipient files a letter of request for duty free importation either with the NEDA or the DOE. The NEDA processes, evaluates, and endorses requests for duty free importation for machinery and equipment. The DOE processes, evaluates, and endorses requests for duty free importation of relief goods (medicines, food, among others) intended for DSWD accredited and licensed non-government organizations, as well as books, publications, and education-related materials/equipment.

The letter to NEDA is addressed to:

The Director
Trade, Industry, and Utility Staff
National Economic and Development Authority
Amber Ave., Pasig City

The letter to DOE is addressed to:

The Secretary
Department of Finance
Attention: Revenue Operations Group
DOE Bldg., Roxas Blvd., Manila

Important: For books and publications, the letter to DOE must be addressed to the Secretary of Finance (Attention: Mabuhay Lane).

RELEASE OF DONATION

Upon receipt of the endorsement by the agency concerned for the duty-free certification on the donation, the DOE issues the appropriate clearance and forwards the same to the Central Records Division, Bureau of Customs (BOC) by official messenger. A duplicate copy of the DOE clearance may be furnished to the donee/consignee or recipient upon request.

The Tax Exempt Division of the BOC endorses the release of donation and forwards this document to the Informal Entry Division of the District Office concerned (South Harbor, MICP, NAIA, etc.). The Informal Entry Division checks/verifies, appraises and examines the donated shipment.

After completing the documentation and the payment of processing fees and charges (i.e., terminal handling fee, stripping, arrastre/wharfage, among others), the Bureau of Customs releases the shipment to the donee/consignee or its authorized representative. Processing for the release of donation at the Bureau of Customs usually takes about two to three (2-3) working days if all requirements are complete.

Important: Donations, even if accorded duty free privilege, are still subject to value added tax (VAT), which is computed at 100/0 of the landed cost of the shipment.

REFERENCES

lorence Educational Scientific and Cultural Agreement, Italy, 1950, UNESCO National Commission of the Philippines

General Guidelines on Donation of Pharmaceutical Products, Bureau of Food And Drugs Memorandum Order No. 004-88

Guidelines on Availing of the Tax Incentives Provision of the Adopt-A-School Program; Guidebook on Procedures and Requirements Governing Importation of Donations, Department of Education, Culture and Sports

Procedural and Document Requirements for the Processing and Clearance of Donations by the Department of Health

Rules and Regulations Implementing Section 4(3) Article XIV of the New Constitution, Department of Finance Order Nos. 137-87, as amended

Primer on the Availment of Duty/Tax Exemption by NGOs, December 1989, National Economic and Development Authority

Primer on the NEDA Rules and Regulations Governing the Implementation of the last Clause of the Last Paragraph of Section 105 of the Tariff and Customs Code and NEDA Board Resolution No. 58 s,1988.