

BED CIRCULAR NO. 81-05-05

RULES AND REGULATIONS GOVERNING TAX-EXEMPT IMPORTATIONS UNDER PRESIDENTIAL DECREE NO. 1442

Pursuant to Section 6 of Presidential Decree No. 1442, the following rules and regulations are hereby promulgated to implement the intent and provisions of Section 4 (a) thereof.

Rule 1. EXEMPTION

In accordance with Section 4 (a) of Presidential Decree No. 1442, the geothermal service contractor may be authorized by the Bureau of Energy Development to import under certain conditions machinery and equipment, spare parts and materials required in their geothermal operations without payment of customs duty and compensating tax.

“Required in the geothermal operation” shall mean that the machinery, equipment, spare parts and/or materials sought to be exempted are directly an actually needed and will be used exclusively by the applicant in its operation or in operation for it by a contractor or subcontractor which the applicant or its contractor or subcontractor is currently engaged or is expected to engage within a reasonable period of time.

The exemption of spare parts shall be limited to spare parts imported within a particular one calendar year period, the aggregate cost of which shall not exceed ten percent (10%) of the cost of the specific machinery or equipment where they will be used. Spare parts in excess of the above amount allowed to be imported within the said one-year period shall be subject to the regular duty and taxes.

Rule 2. APPLICATION

All applications for tax-exempt importations shall be made upon BED Form No. 81-001 (Annex A) which shall be accomplished in triplicate and sworn by a responsible officer

of the applicant before a notary public.

Applications shall be examined first as to completeness of the required data and information to facilitate proper processing and evaluation and those that are incomplete shall not be accepted.

Except in cases covered under the next succeeding rule, no application shall be accepted unless filed at least ten (10) days prior to actual importation. For this purpose, importation shall mean, in the appropriate case, the opening of letters of credit, the placing of purchase orders in case of open account, or the execution of the lease contract in case of lease arrangement, for the machinery, equipment, spare parts and materials sought to be exempted.

All applications for tax-exempt importation required in geothermal operations shall state clearly in the accompanying BED Form No. 81-001 the specific end use of the machinery, equipment, spare parts and/or materials to be imported, place and use or installation of the said machinery, equipment, spare parts and /or materials, and the designation given to the particular geothermal operations in accordance with the following:

1. Specific end use of the tax-exempt importation shall be clearly stated in the space specifically provided therefore in BED Form No. 81-001. “Specific end use” shall mean the very use, function, or purpose for which the machinery, equipment, spare parts and/or materials are imported. The imported machinery, equipment, spare parts and/or materials must be needed in the geothermal operations such that its/their absence hampers the normal pace of the said geothermal operations.

2. Specific place of use or installation of the machinery, equipment, spare parts and/or materials to be imported identifying the municipality and province. If practicable, shall be stated in the space provided therefore in BED Form No. 81-001.

Rule 3. EMERGENCY IMPORTATION

In case of importation urgently needed in the geothermal operations where the service contractor could not comply with the requirements provided in Rule 2 without incurring delays and needless expenses, the BED, upon written request for good cause shown, may authorize the importation without prepayment of customs duty and compensating tax upon the posting of a good and sufficient bond in favor of the Bureau of Customs in an amount not less than the stated amount of duty and tax from which the importation is being exempted. It shall be the principal condition of the bond that the importer shall submit to the Bureau of Customs within thirty (30) days from the withdrawal of the importation from customs custody, the appropriate certificate issued by the BED qualifying the importer to undertake the importation on a tax-exempt basis. Failure of the importer to produce said certificate within the prescribed period shall cause the automatic cancellation of the bond in favor of the government without recourse to a suit in law.

Rule 4. CONDITIONS FOR TAX-EXEMPT IMPORTATION

The tax-exempt importation of machinery, equipment, spare parts and/or materials shall be authorized under the following conditions:

- a. The importation is directly and actually needed and will be used exclusively by the contractor in its operation or in operation for it by a contractor which it is currently engaged or is expected to engage within a reasonable period of time.

- b. The machinery and equipment, spare parts and/or materials proposed to be imported are not manufactured domestically at comparable prices and quality.

For this purpose, the BED may cause the publication, at the expenses of the service contractor, or a notice to purchase machinery, equipment, spare parts and/or materials known to be domestically manufactured in a newspaper of general circulation, with a list of the proposed importations for the information of all domestic companies concerned. Domestic manufacturers shall be advised to submit to the BED within five (5) days from the date of publication their respective firm names, addresses, locations of their plants, the names of their general managers and chief engineers, telephone numbers and the machinery, equipment, spare parts and/or materials proposed to be imported which they manufacture or could manufacture to adequately meet the needs of the contractor, the prices thereof and quantity and quality of their products.

In determining the reasonableness of the prices quoted by the domestic manufacturers, the BED may be guided by the acquisition cost of similar machinery, equipment, spare parts and/or materials imported in the Philippines, if all applicable taxes and duties were paid thereon, plus fifteen percent (15%) mark-up.

- c. The certificate shall be valid for a period of six (6) months from the date stated thereon.
- d. The importation is covered by shipping documents in the name of the Contractor as consignee to whom the shipment will be delivered directly by the customs authorities.

- e. All existing rules and regulations governing the bringing into the Philippines of foreign articles and the clearance thereof from customs custody are complied with.

Rule 5. BED ACTION

The action of the BED on the application, whether it be approval or disapproval, shall be communicated in writing to the contractor. If the action be that of approval, the Bureau shall forward to the Collector of Customs of the port where the importation is proposed to be entered a Certificate of Qualification for Tax-Exemption (BED Form No. 81-002, Annex "B") on the basis of which the operator can secure release of the imported machinery, equipment, spare parts and/or materials indicated therein without payment of customs duty and compensating tax. Copies of the certificate shall also be sent to the Minister of Finance, the Commissioner of Customs and the contractor.

Rule 6. POST IMPORTATION REQUIREMENTS

Within thirty (30) days following the release of the importation from Customs custody, the contractor shall submit to the BED copies of official documents required under the Revised Tariff and Customs Code of the Philippines, as amended, indicating the description, quantity and price of the machinery, equipment, spare parts and/or materials imported, the names of the supplier and carrying vessel and other particulars relating to said importation.

The Contractor shall, within the same period stated in the preceding paragraph, advise the BED in writing of the precise place to where the importation has been taken and the actual use thereof. In case installation is necessary, the same shall be made within one hundred twenty (120) days following the withdrawal of the importation from customs custody, unless said period is extended by the BED upon proper request for good cause shown. In the latter case, the thirty-day period for

submitting the written advice to the BED shall be counted from the time the installation is completed.

In connection with the foregoing, the BED reserves the right to send its duly authorized representatives for the purpose of verifying whether or not the importation has actually been installed and is being used in the geothermal operations as represented by the contractor.

Rule 7. PRIOR APPROVAL OF SALE OR DISPOSITION

The Contractor shall not sell, transfer, export or dispose of the machinery, equipment, spare parts and/or materials which were allowed to be imported on a tax-exempt basis without prior approval of the BED and payment of duties and taxes to the government. In case of sale, transfer, export or other disposition without prior approval of the BED, the contractor shall be liable to pay twice the amount of taxes and duties which were originally waived in its favor. However, the Bureau of Energy Development may allow and approve the sale, transfer or disposition without tax if made to:

- a. Another contractor under a geothermal service contract;
- b. For reasons of technical obsolescence; or
- c. For purposes of replacement to improve and/or expand operation under the geothermal service contract.

BED Form No. 81-003, attached as Annex "C", is the application form for sale, transfer, exportation or disposition of tax-exempt importations made under Presidential Decree No. 1442. The authority granted by the BED for the contractor to sell, transfer, export or dispose such tax-exempt importations appears in BED Form No. 81-004, attached as Annex "D".

Rule 8. FEE

A processing fee of fifty pesos (PhP50.00) shall be required for every application under these rules and regulations.

Rule 9. EFFECTIVITY

These rules and regulations shall take effect immediately. Copies thereof shall be furnished to the Ministry of Finance, the Bureau of Customs and the contractor under

a geothermal service contract.

May 19, 1981

W. R. DE LA PAZ

Acting Director

APPROVED By:

GERONIMO Z. VELASCO

Minister of Energy

BED CIRCULAR NO. 81-11-09

TO: ALLSERVICE CONTRACTORS UNDER:

P. D. 87 (The Oil Exploration and Development Act of 1972)

P. D. 972 (The Coal Development Act of 1976)

P. D. 1442 (The Exploration and Development of Geothermal Resources)

It has been observed that Service Contractors submit application for the exemption on the importation of spare parts of exploration and development related equipment/machineries without submitting the BEDTEC No. of the principal equipment/machineries where the spare parts will be used. This practice results in delays in their release due to occasional technicalities that arise regarding the validity of application for tax exemption of certain spare parts.

All Service Contractors are therefore reminded and enjoined to observe the Rules and Regulations Covering Tax-Exemption Importations under P. D. Nos. 87, 972, 1442, which provide that:

THE EXEMPTION OF SPARE PARTS SHALL BE LIMITED TO SPARE PARTS IMPORTED WITHIN A PARTICULAR ONE CALENDAR YEAR PERIOD, THE AGGREGATE COST OF WHICH SHALL NOT EXCEED TEN PERCENT (10%) OF THE SPECIFIC MACHINERY OR EQUIPMENT WHERE THEY WILL BE USED. SPARE PARTS IN EXCESS OF

THE ABOVE AMOUNT ALLOWED TO BE IMPORTED WITHIN THE SAID ONE-YEAR PERIOD SHALL BE SUBJECT TO THE REGULAR DUTY AND TAXES.

To fully implement the above provision, it is hereby directed that all applications for tax-exemptions of spare parts shall indicate:

1. The BEDTEC No. of the principal machinery/equipment where all the spare parts are to be used when entered tax free under P. D. Nos. 87, 972 or 1442;
2. The total value of the spare parts on previous importations for a particular machinery or equipment;
3. The value of the principal equipment or machinery.

Likewise, all Service Contractors are again reminded to strictly comply with the requirement of specifying the specific end use and place of use of tax-exempt importations embodied in Bureau Circular No. 11, Series of 1977.