January 14, 2020

BIR RULING NO. OT-003-20

Atty. Noel K. Felongco
Lead Convenor/Secretary
National Anti-Poverty Commission
Water Supply Training Center, MWSS-LWUA Complex
Katipunan Avenue, Quezon City 1105 M.M.

Sir :

In relation to your 1st Indorsement dated December 18, 2018 forwarding to this Office NAPC-AFSC Resolution No. 4, Series of 2018 from the National Anti-Poverty Commission-Artisanal Fisherfolk Sectoral Council (NAPC-AFSC) entitled "Resolution Appealing to the Department of Budget and Management (DBM), National Anti-Poverty Commission (NAPC) and Bureau of Internal Revenue (BIR) for Retroactive Payment of Per Diems to NAPC Basic Sectoral Council Members from the Month of February to December, 2018 and that this be Exempted from Taxes."

It is represented that NAPC Basic Sectoral Council Members, particularly, Fisherfolk Sector continuously work as volunteers from local to national level to push through their sectoral agenda despite the expiration of their contract for service. During the pendency of their voluntary works, NAPC Memorandum Order (M.O.) No. 2018-08-025 has been issued for the continuance of service in hold-over capacity of Basic Sectoral Council members. Based on the issuance of the said memorandum for the continuance of service in hold-over capacity, NAPC-AFSC issued a resolution appealing to the DBM, NAPC and BIR for retroactive payment of per diems of NAPC Basic Sectoral Council Members from February up to December 2018 and exemption of the same from payment of taxes.

In reply, please be informed that the power to tax is purely legislative in character and the power to grant tax exemption is merely corollary to the legislature's inherent power to tax. That being said, it is only upon the Congress to grant tax exemption. The Bureau of Internal Revenue is mandated by law to implement tax laws and has no power to grant tax exemptions. Hence, it cannot exempt from taxes the per diems of NAPC Basic Sectoral Council Members. With respect to the appeal for the retroactive payment of per diems, the same is best addressed to the DBM and NAPC.

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(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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