June 13, 2018

BIR RULING NO. 1007-18

RA 9520

Naga Imaging Center Cooperative (NICC)
Roxas Avenue, Diversion Road, Triangulo, Naga City

Attention: *AAA*

Gentlemen :

This refers to the Appeal from the denial of tax exemption dated January 7, 2016, on behalf of your client **NAGA IMAGING CENTER COOPERATIVE (NICC)**, received by the Office of the Commissioner on January 8, 2016 appealing the denial by the Revenue Region (RR) No. 10-Legazpi City Regional Director of the application for renewal of its certificate of tax exemption (CTE) as prescribed under Republic Act (RA) No. 9520.

Documents submitted disclose the following facts:

1. On June 4, 2014, NICC filed with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 65-Naga City an application for renewal of CTE.

2. On October 7, 2015, RR No. 10-Legazpi City issued a ruling denying its request stating:

   "In reply, per verification of the Revenue District Officer, Revenue District No. 65, Naga City, it was found out that:

   a) That the cooperative was classified as cooperative service which was organized to engage in private hospital, medical and other health services; and

   b) Engaged in other services such as rentals of clinic spaces, for the Cooperative's physicians.

   Please be informed also that Revenue Memorandum Circular No.

Copyright 2020 CD Technologies Asia, Inc.

12-2012 — Circularizes the Full Text of the Cooperative Development Authority's Memorandum on the Request for Non-Registration of Cooperatives Not Specifically Identified under Republic Act (R.A.) No. 9520.

***IN VIEW OF THE FOREGOING**, your application for tax exemption is hereby **DENIED**. Your cooperative is not precluded from filing an appeal and elevate the matter to the Office of Commissioner, Bureau of Internal Revenue, National Office Building, Diliman, Quezon City."*

3. Even without receiving yet the copy of the supposed denial dated March 3, 2015, **NICC** filed a letter of reconsideration for reversal of denial of its application for renewal of CTE.

4. In response to the said reconsideration, the RDO of 65-Naga City issued a letter to NICC dated September 29, 2015, reiterating the position denying the request for exemption with finality citing RMC 12-2012.

5. NICC filed its appeal with the Office of the Commissioner of Internal Revenue on January 8, 2016 [1] raising the issue of *"whether of not* **NAGA IMAGING CENTER COOPERATIVE (NICC)** *is entitled to tax exemption."* NICC contends that, as a Service Cooperative as shown by the approved Articles of Cooperation, the Regional Director erred in denying its renewal of CTE on the basis of RMC No. 12-2012 and prays that its application for renewal of its CTE be granted.

6. NICC, with Tax Identification Number 000-000-000-000, is a primary cooperative duly organized under the laws of the Philippines; that it is registered with the Cooperative Development Authority (CDA) under Registration No. 9520-05003298 dated November 27, 2009; and that the purposes for which it was formed are the following:

    1) Private Hospital, Medical and other health services;

    2) Pharmacy or drugstore;

    3) Sale of medical equipment and supplies;

    4) Canteen operation;

    5) Rental of clinic spaces;

    6) Lease of portion of building for commercial purposes;

    7) Enter into medical service contract with government agencies,

Copyright 2020 CD Technologies Asia, Inc.

non-government organizations and other companies from private sector.

7. On August 9, 2010, NICC obtained a CTE from Revenue Region No. 10-Legazpi City as a cooperative transacting with both members and non-members with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00), thus entitled to the following tax exemptions and incentives provided by Article 61 of Republic Act No. 9520, as implemented by Section 8 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520:

    1. Exemption from Income tax on income from CDA-registered operations;

    2. Exemption from Value-Added Tax on CDA-registered sales or transactions;

    3. Exemption from other Percentage tax;

    4. Exemption from Donor's tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the cooperative;

    5. Exemption from Excise tax for which it is directly liable;

    6. Exemption from Documentary stamp tax: *Provided, however*, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;

    7. Exemption from payment of Annual Registration fee of Five hundred pesos (P500.00);

    8. Exemption from all taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system.

8. NICC asserts that it is classified as Health Service Cooperative as shown by the approved Articles of Cooperation. It further avers that the BIR, in the earlier exemption issued in its favor, confirmed that the latter is a duly registered primary service cooperative. Further, NICC remains to be in

Copyright 2020 CD Technologies Asia, Inc.

good standing, hence, the Certificate of Registration remains effective, valid and existing.

9. NICC has complied will all pertinent laws, regulations and Revenue Memorandum Order No. 76-2010.

10. In denying NICC's application as a cooperative under RA No. 9520, the RR No. 10-Legazpi City cited Revenue Memorandum Circular (RMC) 12-2012 [2] and was of the position that NICC, per verification of the Revenue District Officer, Revenue District No. 65, Naga City, was found out to be a cooperative service organized to engage in private hospital, medical and other health services; and engaged in other services such as rentals of clinic spaces for the Cooperative's physicians.

11. NICC invokes its exemption from income tax as a cooperative under Article 23 (e) of RA No. 9520, to wit:

"Art. 23. Type and Categories of Cooperatives. — Types of Cooperatives — Cooperatives may fall under any of the following types:

(a) x x x

xxx xxx xxx

(e) Service Cooperative is one which engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication, professional and other services";

In reply, please be informed that Article 23 (e) of RA No. 9520, identifies the following types of cooperative:

Art. 23. Type and Categories of Cooperatives. — Types of Cooperatives — Cooperatives may fall under any of the following types:

xxx xxx xxx

(e) Service Cooperative is one which engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication, professional and other services;

xxx xxx xxx

(u) Other types of cooperatives as may be determined by the Cooperative Development Authority."

Copyright 2020 CD Technologies Asia, Inc.

The above provision speaks of a service cooperative, which includes "other services." This indicates that the law is meant to be comprehensive enough to cover a multitude of services. Also, par. (u) of the same provision, talks about other types of cooperatives as may be determined by the CDA, connoting permissibility or allowing discretion on the part of the CDA to register such other types of cooperatives as it may deem proper.

Moreover, the law's obvious intent to favor cooperatives is strengthened by expressly providing that any doubt in the interpretation and construction of RA 9520 should be resolved liberally in favor of the cooperatives, thus:

> *"ART. 142. Interpretation and Construction. — In case of doubt as to the meaning of any provision of this Code or the regulations issued in pursuance thereof, the same shall be resolved liberally in favor of the cooperatives and their members."*

RMC No. 12-2012, entitled *"Circularizes the Full Text of the Cooperative Development Authority's Memorandum on the Request for Non-Registration of Cooperatives Not Specifically Identified under Republic Act (R.A.) No. 9520,"* provides for the memorandum dated January 31, 2012 of Chairman Emmanuel M. Santiaguel, Ph.D. of the Cooperative Development Authority (CDA), addressed to all their Regional Directors, in response to the Bureau of Internal Revenue request dated January 9, 2012 for CDA, to refrain from issuing certificates of registration, and recall or revoke those already issued to those organizations not specifically identified under R.A. No. 9520 such as labor contracting, professional, construction, mining and other cooperatives similarly created.

On the other hand, RMC No. 57-2012, entitled *"Publishing the Full Text of the Memorandum Circular No. 2012-08, Series of 2012 of the Cooperative Development Authority,"* provides for the temporary recall of the delegated function to register selected types of primary Cooperatives.

RMC No. 12-2012 only shows the instruction of the CDA to its Regional Directors to refrain from registering the cooperatives (*i.e.*, as labor contracting, professional, construction, mining and other cooperatives similarly created) and conduct inspection/examination and/or investigation and to verify complaints that the cooperatives previously registered were used as tax shield; hence, could be considered as fraudulently registered, which is one of the grounds for cancellation and revocation of Certificate of Registration; while RMC No. 57-2012 provides that the delegated function of Regional Directors of CDA to register cooperatives (*i.e.*, as labor contracting, professional, construction, mining and other cooperatives similarly created) has been recalled and shall be filed with the CDA Central Office.

Nowhere in the language of RMC Nos. 12-2012 and 57-2012 does it expressly or even impliedly provide that the exemption of these cooperatives (*i.e.*, as labor contracting,

Copyright 2020 CD Technologies Asia, Inc.

professional, construction, mining and other cooperatives similarly created) have been recalled, cancelled or revoked, Moreso, with the issuance of the CDA Memorandum Circular (MC) No. 2012-13 dated 7-18-12, entitled *"Guidelines for the Registration of Health Service Cooperative,"* providing guidelines to all existing cooperatives engaged in hospital operation, health services and other related business operation, a health service cooperative may be entitled to the tax exemptions and incentives provided by Articles 60 and 61 of Republic Act No. 9520, as implemented by Section 8 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520, subject to existing rules and regulations implemented by the CDA and BIR.

WHEREFORE, from the foregoing discussions, this Office hereby reverses the denial by RR No. 10-Legazpi City of the application of NICC for renewal of its CTE per its letter dated October 7, 2015, as reiterated in its letter dated December 21, 2015 and hereby holds that NICC is a health service cooperative which may be entitled to the tax exemptions and incentives provided by Articles 60 and 61 of Republic Act No. 9520, as implemented by Section 8 of the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520, subject to existing rules and regulations implemented by the CDA and BIR. Since NICC is transacting with members and both non-members, to be entitled to tax exemption — insofar as its transaction with non-members is concerned — it must have accumulated reserves and undivided net savings of not more than P10,000,000.

NICC is directed to strictly comply with the requirements prescribed in RMO No. 76-2010, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

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

Footnotes

1. NAGA IMAGING CENTER COOPERATIVE (NICC) Appeal is dated January 7, 2016. All attachments are photocopies.
2. Circularizing pertinent portions of the Supreme Court's decision on *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, G.R. No. 195909 & G.R. No. 195960 promulgated September 26, 2012.

Copyright 2020 CD Technologies Asia, Inc.

Copyright 2020 CD Technologies Asia, Inc.