June 13, 2018

BIR RULING NO. 1014-18

Section 30 (E) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

Sinag-Kalinga Foundation, Inc.
Country Side Subd., Brgy. Ayuti,
Lucban, Quezon 4328

Attention: *AAA*

Gentlemen :

This refers to your letter dated August 26, 2016 applying on behalf of **SINAG-KALINGA FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 9, San Pablo City, through 2nd Indorsement dated October 10, 2016.

It is represented that **SINAG-KALINGA FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 1RC0000654350 dated July 08, 2002, is a non-stock, non-profit association duly organized and existing under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. A1997-19723; and that the purposes [1] for which the association was incorporated are:

1. *To extend assistance to the needy, the homeless, the abandoned, the destitute, most particularly the aged, by providing them with the basic necessities in life, like food, clothing, shelter and health care.*

2. *To uplift the living conditions of members by assisting them in the establishments of livelihood facilities, services and enterprise.*

3. *To encourage the members in the effective utilization of local resources in livelihood activities and thereby improve the living condition in the community.*

Copyright 2020 CD Technologies Asia, Inc.

4. *To acquire loans and other financial accommodations from the government and private lending institutions in order to finance productive livelihood enterprises.*

5. *To assist and support the members in the promotion of their business.*

6. *To develop and harness the people's participation in every economic activity toward the development of the community through self-help and self-reliance.*

7. *To offer and provide the members including their families, opportunities to participate actively in any program relative to the promotion and encouragement of small business entrepreneurs.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/organizations that are exempt from income tax in respect to income received by them as such. Section 30 (E) of the National Internal Revenue Code of 1997, as amended, provides, *viz.*:

> *"Sec. 30. Exempt from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:*
>
> xxx xxx xxx
>
> *(E) Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer of any specific person;*
>
> xxx xxx xxx"

"Non-stock" means *"no part of its income is distributable as dividends to its members, trustees, or officers"* and that any profit *"obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized."* [2] "Non-profit" means that *"no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit."* [3]

Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the National Internal Revenue Code, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

Copyright 2020 CD Technologies Asia, Inc.

1. *The payment of compensation, salaries, or honorarium to its trustees or organizers; x x x.*

In the submitted documents of **SINAG-KALINGA FOUNDATION, INC.**, it was disclosed that Board of Trustees are entitled to Compensation/Honoraria. _____ Certification par. 2 by **SINAG-KALINGA FOUNDATION, INC.** _____ AAA, dated February 24, 2014, states that:

> *"2. That the aggregate income, compensation, and or emoluments paid and incurred by the corporation to its trustees, officers and other executive officers annually are as follows:*
>
> | ***Position*** | ***Amount*** |
> |---|---|
> | *Officers & other Executive Officers* | *PHP_____* |
> | *Other Officers & Senior Staff Officers* | *PHP_____* |
> | *Trustees* | *PHP_____* |
> | *Internal Auditor and Staff* | *PHP_____"* |

The giving of compensation/honoraria to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **SINAG-KALINGA FOUNDATION, INC.** This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **SINAG-KALINGA FOUNDATION, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) of the National Internal Revenue Code of 1997, as amended.

Please bear in mind that, *"being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax."* [4] Thus, *"statutes granting tax exemption are construed **strictissimi juris** against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed."* [5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **SINAG-KALINGA FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **SINAG-KALINGA FOUNDATION, INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.

Copyright 2020 CD Technologies Asia, Inc.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. First, Amended Articles of Incorporation.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
4. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

Copyright 2020 CD Technologies Asia, Inc.