June 28, 2018

BIR RULING NO. 1039-18

Section 30 (J) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 151-2014

Palayan ng Blaan Communal Irrigation Association, Inc.
New Kabasagan, Matanao, Davao Del Sur 8003

Attention: *AAA*

Gentlemen :

This refers to your application for the issuance of a Certificate of Tax Exemption pursuant to Section 30 (J) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 19, Davao City, through 1st Indorsement dated December 07, 2015.

It is represented that **PALAYAN NG BLAAN COMMUNAL IRRIGATION ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000650825 dated April 20, 2006, is a non-stock, non-profit corporation 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. 84824; and that the purposes [1] for which the corporation was incorporated are:

1. *To provide the members with an adequate supply of portable water for domestic use at a reasonable cost;*

2. *To construct, own, manage, control, and maintain water wells, water tanks, pipe networks; to erect buildings and other structures that will serve as central station and office of the Association; to acquire water pumps, pipes and other related equipment and materials to be used for tapping and distributing potable water to members; and to fix, charge, and collect from its members service fees and charges needed for the proper maintenance of the Association's equipment and materials;*

3. *To provide a system for the effective distribution of potable water to*

Copyright 2020 CD Technologies Asia, Inc.

the members for their domestic use; extend to the members the opportunity to learn and employ proper methods on water conservation; provide among members experience in formal organization and self-government and to encourage participation of the members in community development; and among other things, serve as a vehicle thru which government and private assistance may be equitably and effectively extended to the members;

4. *To raise funds to carry on its purpose through contributions, fees, dues, and charges from its members as well as donations from any source. To initiate and sponsor fund raising campaigns from the public, as authorized by law for the realization of projects. To enquire, purchase, own, hold, develop, lease, mortgage, pledge, exchange, sell, transfer, or otherwise invest, trade, or deal in, any manner permitted by law, real and personal property of any kind and description or any interest therein, as necessary for the accomplishment of the purpose of the Association; and*

5. *To enter into, make, perform, and carry out, or cancel and rescind contracts of any kind and for any lawful purpose with any person, firm, association, corporation, syndicate, domestic or foreign, and others.*

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 (J) 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
>
> *(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irritation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; x x x"*

"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*

Copyright 2020 CD Technologies Asia, Inc.

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:

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

xxx xxx xxx

In the submitted documents of **PALAYAN NG BLAAN COMMUNAL IRRIGATION ASSOCIATION, INC.**, it was disclosed that:

1. The Board of Trustees shall serve without compensation while the association is not capable. However, if the IA is financially able to do so, they are entitled to and shall receive Honorarium based on the annual budget and subject to the approval of the General Membership; [4]

2. Honorarium/Per Diem are being given to the Board of Trustees for their services to the association for maintaining the operation of the irrigation system and collecting the irrigation fees from the members; [5] and

3. The Board of Trustees are receiving a minimal _____ Pesos (P_____) honorarium/per diem every meeting at least once a month. [6]

The giving of honorarium, per diem, and other incentives to the members of the Board of Trustees are considered distributions of the equity (including the net income) of **PALAYAN NG BLAAN COMMUNAL IRRIGATION ASSOCIATION, INC.** These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit corporation. These acts violate 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, **PALAYAN NG BLAAN COMMUNAL IRRIGATION ASSOCIATION, INC.** cannot be qualified as a non-stock, non-profit corporation or association under Section 30 (J) 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."* [7] Thus, *"statutes*

Copyright 2020 CD Technologies Asia, Inc.

granting tax exemptions 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."* [8] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **PALAYAN NG BLAAN COMMUNAL IRRIGATION ASSOCIATION, INC.** to be exempted from income tax on its income as a Section 30 (J) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **PALAYAN NG BLAAN COMMUNAL IRRIGATION ASSOCIATION, 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.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second Provision of the corporation's 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. Section 10, Article VIII of the Corporation's New By-Laws.
5. Certification under Oath by AAA, the IA _____, as to the Corporation's disposition of income, contemplated expenditures, and Statement of Revenue over Expenses.
6. Certification under Oath by BBB, the _____ of the Corporation.
7. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
8. *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.