June 28, 2018

BIR RULING NO. 1041-18

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

Southmin Ihome Incorporated
Habitat Site Phase A, Brgy. Mabuhay,
General Santos City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 19, 2013 applying in behalf of **SOUTHMIN IHOME INCORPORATED** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (G) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 18, Koronadal City, through 2nd Indorsement dated December 12, 2013.

It is represented that **SOUTHMIN IHOME INCORPORATED** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000308529 dated June 25, 2010, 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. CN201026607; and that the purposes [1] for which the association was incorporated are:

1. *To promote the social welfare of marginalized Filipinos through building homes to address poverty housing*;

2. *Land acquisition for low cost housing construction*;

3. *Construction of community infrastructures/facilities in support to the delivery of basic social services such as school buildings, school libraries, day care centers, multi-purpose centers, water systems*;

4. *Facilitate educational assistance to deserving children of housing*

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beneficiaries through provisions of school supplies and school kits;

5. *Facilitate/provide livelihood training and/or assistance to benefit the communities being served*;

6. *To facilitate delivery of health services such as conduct of health trainings, assistance during medical-dental missions and conduct of health surveys*;

7. *Delivery of assistance (food and non-food items) in times of disasters; and*

8. *Partner with various stakeholders*.

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 (G) 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
>
> *(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;*"
>
> 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:

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

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In the submitted documents of **SOUTHMIN IHOME INCORPORATED**, it was disclosed that the Board of Trustees are entitled to Allowances and Incentives. In the 2013 Financial Statement of **SOUTHMIN IHOME INCORPORATED**, note 2.11 Schedule of Administrative Expense, it was enumerated that the Board of Trustees received allowances and incentives in the respective amounts of PhP_____ and PhP_____.

The giving of allowances and incentives to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **SOUTHMIN IHOME INCORPORATED**. 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, **SOUTHMIN IHOME INCORPORATED** cannot be qualified as a non-stock, non-profit corporation under Section 30 (G) 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 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."* [5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **SOUTHMIN IHOME INCORPORATED** to be exempted from income tax on its income as a Section 30 (G) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **SOUTHMIN IHOME INCORPORATED** 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. First, Amended Articles of Incorporation.
2. Section 87, Corporation Code.

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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].

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