June 28, 2018

BIR RULING NO. 1043-18

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

Balao Rural Welfare and Services Association
Balao, Barili, Cebu

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. 13, Cebu City, through an Indorsement dated May 12, 2017.

It is represented that **BALAO RURAL WELFARE AND SERVICES ASSOCIATION** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. 2RC0000056293 dated May 10, 2005, 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 Department of Labor and Employment (DOLE) under Registration Certificate No. 3307; and that the purposes [1] for which the association was incorporated are:

1. *To sustain the management and operation of the waterworks system facilities project funded by Hon. Pablo P. Garcia, Gov. of Cebu Province; and*

2. *To maintain the activity of the project "Clean and Green Program" and disperse its benefits to other association members.*

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

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organizations shall not be taxed under this Title in respect to income received by them as such:

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> *(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation 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 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*;

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In the submitted documents of **BALAO RURAL WELFARE AND SERVICES ASSOCIATION**, it was disclosed that the Board of Trustees are receiving honorarium. [4]

The giving of honorarium and other incentives to the members of the Board of Trustees are considered distributions of the equity (including the net income) of **BALAO RURAL WELFARE AND SERVICES ASSOCIATION**. 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, **BALAO RURAL WELFARE AND SERVICES ASSOCIATION** 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."* [5] Thus, *"statutes granting tax exemptions are construed **strictissimi juris** against the taxpayer and*

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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." [6] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **BALAO RURAL WELFARE AND SERVICES ASSOCIATION** 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, **BALAO RURAL WELFARE AND SERVICES ASSOCIATION** 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 association's 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. Financial statements of the Association and the original copy of the Certification under Oath by the Treasurer of the Association.
5. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
6. *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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