Quezon City

Section 30 (J) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14
BIR Ruling No. 466-2014
S30J-012-2020
JAN 16 2020

MABINI BARAYONG COMMUNAL IRRIGATION ASSOCIATION, INC.
Mabini, Magsaysay, Davao del Sur

Attention: **NOLLY E. LASCO**
President

Gentlemen:

This refers to your letter, dated March 20, 2018, applying on behalf of **MABINI BARAYONG COMMUNAL IRRIGATION ASSOCIATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under 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 July 12, 2018.

It is represented that **MABINI BARAYONG COMMUNAL IRRIGATION ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) (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. 38724; and that the purposes for which the association was incorporated are:

1. *To divert, operate and maintain an irrigation system in order to provide irrigation water to the respective lands of the members of the association;*
2. *To enable the farmers in the Barrios of Mabini and Barayong, municipality of Magsaysay, Davao Del Sur, to come together to discuss their common farm problems and devise ways and means to improve their economic conditions;*
3. *To develop talents and abilities to solve common problems; and*
4. *To provide a media through which different government agencies may serve a greater number of people at the least possible time.*

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*

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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; and;"

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*".[1] "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*".[2]

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.*

In the submitted documents of **MABINI BARAYONG COMMUNAL IRRIGATION ASSOCIATION, INC.**, it was disclosed that members of Board of Trustees are entitled to Honoraria. Sec. 7, Article VII of the By-Laws states that:

"Section 7. REIMBURSEMENT OF EXPENSE – The Board of Trustees shall serve the association with honorarium. However, as for the practicable (sic) they may be reimburse (sic) for actual and necessary expenses incurred by them for activities directly related with the association."

The giving of honoraria to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **MABINI BARAYONG COMMUNAL IRRIGATION ASSOCIATION, 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, **MABINI BARAYONG COMMUNAL IRRIGATION ASSOCIATION, INC.** cannot be qualified as a non-stock, non-profit corporation 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.*"[3] 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.*"[4] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

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[1] Section 87, Corporation Code
[2] CIR vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960 dated 26 September 2012
[3] Ibid.
[4] 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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In view of the foregoing, the request of **MABINI BARAYONG 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, **MABINI BARAYONG 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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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COPY FURNISHED:

REVENUE REGION NO. 19 – Davao City
Attention: Revenue District Office No. 115 – Digos City