January 24, 2020

BIR RULING NO. S30J-022-20

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

Asociacion De Hacenderos
De Silay-Saravia, Incorporated
AHSSI Bldg., Rizal Street, Cabahug Subdivision
Silay City, Negros Occidental

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 9, 2018 requesting for the reconsideration of BIR Ruling No. 718-2018 issued to the **ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED ("ASOCIACION")**, denying its request for Certificate of Tax Exemption.

The pertinent portions of the aforesaid Ruling provide:

> "In the submitted documents of ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED, it was disclosed that the members of the Board of Directors are entitled to per diems. Article Eighteen, of the Amended By-Laws states that:
>
> > *"The Board of Directors shall hold a meeting at least once a month, in the office of the association or any convenient place which the President may designate to deliberate and take action on whatever cases and subject matters which they would deem necessary for the proper function and administration of the Association. The date of their monthly meetings shall be discretionary on the part of the Board of Directors but it must be fixed and determined by them in their first meeting subsequent to their election. The presence of eight (8) members shall constitute a quorum and all resolutions passed and approved by the majority of this quorum shall be valid and binding. The* ***members shall***

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receive a per diem for every board meeting attended, the amount of which shall be fixed by the members."

The giving of per diems to the members of the Board of Directors is considered a distribution of the equity (including the net income) of ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, 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, ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED 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."* [1] 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."* [2] *(BIR Ruling No. 466-2014 dated November 19, 2014)*

In view of the foregoing, the request of ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED 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, ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, 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."

You now request for the reconsideration of the aforesaid Ruling on the ground that the By-Laws of the Corporation providing for the per diem of the Board of Directors have already been amended.

In reply, we regret to inform you that your request for the reconsideration of the above Ruling cannot be granted. While the By-Laws of the Corporation have been duly amended, it was clearly shown in the Financial Statements for 2011 and 2012 that, indeed, officers and directors of the Corporation have been receiving substantial allowances and discretionary expenses fees. It bears emphasizing that the giving of allowances to the officers and directors 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.

As consistently held by this Office, a non-stock, non-profit corporation must not only

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be organized as such, but must also be **operated** as non-profit. The amendment of the By-Laws only cured the defect in the organization of the corporation as non-stock, non-profit, but not its operation as such.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
2. *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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