November 19, 2018

BIR RULING NO. 1393-18

E.O. No. 2, Series of 2016; Section 270 of the National Internal Revenue Code of 1997, as amended

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Gentlemen :

This refers to your letter dated July 28, 2016 requesting for certified true copy of the income taxes paid by Hedcor Sabangan, Inc. in their hydropower project for Calendar Year (CY) 2016.

It is represented that the said document is for your reference in protecting the rights and dignity of the Indigenous People of your municipality, and the recently and much publicized Executive Order (E.O.) No. 2, Series of 2016, entitled "*Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor*."

In reply, please be informed that Section 4 of E.O. No. 2, Series of 2016, states that:

> *"**Section 4. Exception**. — Access to information shall be denied when the information falls under any of the exceptions enshrined in the Constitution, existing laws or jurisprudence."*
>
> *The Department of Justice and the Office of the Solicitor General are hereby directed to prepare an inventory of such exceptions and submit the same to the Office of the President within thirty (30) calendar days from the date of effectivity of this Order.*

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The Office of the President shall thereafter, immediately circularize the inventory of exceptions for the guidance of all government offices and instrumentalities covered by this Order and the general public.

Said inventory of exceptions shall periodically be updated to properly reflect any change in existing law and jurisprudence and the Department of Justice and the Office of the Solicitor General are directed to update the inventory of exceptions as the need to do so arises, for circularization as hereinabove stated." (Underscoring supplied)

The Office of the President immediately circularized the inventory of exceptions for the guidance of all government offices and instrumentalities covered by the said Order and the general public, through a Memorandum from the Executive Secretary, dated November 24, 2016. One of the exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence, under the said Memorandum is:

"5. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers."

Hence, access to information under the E.O. No. 2, Series of 2016, is not all-encompassing as it provides for exceptions under Section 4 thereof. Moreover, Section 7 of E.O. No. 2, Series of 2016, even protects the right of privacy of individuals as it provides:

*"**Section 7. Protection of Privacy**. — While providing access to information, public records and official records, responsible officials shall afford full protection to the right to privacy * of the individual as follows:*

(a) Each government office per Section 2 hereof shall ensure that personal information in its custody or under its control is disclosed or released only if it is material or relevant to the subject-matter of the request and its disclosure is permissible under this order or existing laws, rules or regulations;

(b) Each government office must protect personal information in its custody or control by making reasonable security arrangements against leaks or premature disclosure of personal information which unduly exposes the individual whose personal information is requested, to vilification, harassment or any other wrongful acts; and

*(c) Any employee, official or director * of a government office per Section 2 hereof who has access, authorized or unauthorized, to personal information in the custody of the office, must not disclose that information except when authorized under this order or pursuant to existing laws, rules or regulations."*

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In relation thereto, Section 270 of the National Internal Revenue Code of 1997, as amended, provides that:

> *"**Section 270. Unlawful Divulgence of Trade Secrets**. — Except as provided in Sections 6(F) and 71 of this Code and Section 26 of Republic Act No. 6388, any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income or estate of any taxpayer, the secrets, operation, style or work or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000), or suffer imprisonment of not less than two (2) years but not more than five (5) years, or both."*

Based on the above provision of the National Internal Revenue Code of 1997, as amended, personnel of the Bureau of Internal Revenue (BIR) cannot divulge information gained from taxpayers concerning the latter's business, income, or estate, as well as the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer. Any documents containing these types of information in the BIR's possession are not considered as public documents but are in fact treated as confidential, in accordance with Section 270 of the NIRC of 1997, as amended.

It is to be noted that there are also exceptions to the aforementioned provision: (1) disposition of income tax returns under Section 71 of the National Internal Revenue Code of 1997, as amended; (2) disclosure of income tax returns under Section 26 of Republic Act No. 6388 in case of an individual who files a certificate of candidacy and executes a waiver for the examination of his returns; and (3) information given by the BIR pursuant to a request by a foreign tax authority under an existing tax treaty under Section 4 of Revenue Regulations No. 10-2010. However, the subject request for the certified true copy of the income taxes paid by Hedcor Sabangan, Inc. in their hydropower project for CY 2016 does not fall under any of the above exceptions.

In view of the foregoing, we regret to inform you that this Office cannot grant your request to secure the certified true copy of the income taxes paid by Hedcor Sabangan, Inc. in their hydropower project for CY 2016.

Please be guided accordingly.

Very truly yours,

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

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