REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

Revenue Memorandum Circular (RMC) No. 28-2010
Section 5.116 (A) (4) (b), Revenue Regulations No. 2-98
Republic Act No. 10026
BIR Ruling No. 179-12
#182-2016
5-16-2016

CLARIN WATER DISTRICT
Juan Zafra Street corner Johnson Street,
Poblacion Norte, Clarin,
Province of Bohol 6330

***Attention*: DR. EMMANUEL A. SANCHEZ**
General Manager

Gentlemen:

This refers to your letter dated April 27, 2011, with attachments, as indorsed by the Regional Director of Revenue Region No. 13, Cebu City, on June 23, 2011, relative to your request from this Office for a ruling as to whether or not **CLARIN WATER DISTRICT** is exempt from Income and Franchise Taxes pursuant to Revenue Memorandum Circular (RMC) No. 28-2010 and Section 119 of the Tax Code of 1997, as amended, respectively, in relation to **Republic Act No. 10026, *entitled "An Act Granting Income Tax Exemption to Local Water Districts by Amending Section 27 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Adding Section 289-A to the Code, for the Purpose."***

It is represented that **CLARIN WATER DISTRICT** with business address at Juan Zafra corner Johnson Streets, Poblacion Norte, Clarin, Bohol, was created and organized under **Presidential Decree (PD) No. 198, *otherwise known as the "Provincial Water Utilities Act of 1973"*** through **Resolution No. 75, Series of 1988, entitled *"Organizing The Clarin Water District Association, Clarin, Bohol,"*** which was passed by the Sangguniang Bayan of the Municipality of Clarin, Bohol on March 24, 1988; that it is duly registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification No. (TIN) on May 4, 2000; and that it was

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issued a Certificate of Conformance No. 398 on May 17, 1989 by the Local Water Utilities Administration.

In support of its request, **CLARIN WATER DISTRICT** submitted the following documents:

1) A certified true copy of its BIR Certificate of Registration;
2) A certified true copy of the Municipality's Sangguniang Bayan Resolution No. 75, Series of 1988;
3) A certified true copy of its Local Water Utilities Administration's (LWUA) Certificate of Conformance;
4) Copies of its Annual Information Returns and Financial Statements for the years 2009-2012 as audited by COA; and
5) Copies of its By-laws.

In reply, please be informed that **Republic Act No. 10026, entitled *"An Act Granting Income Tax Exemption To Local Water Districts by Amending Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Adding Section 289-A to the Code, for the Purpose*** in relation to **Section 1 of Revenue Memorandum Circular (RMC) No. 28-2010,** dated March 11, 2010, in pertinent part provides that:

> **"SEC. 27. Rates of Income Tax on Domestic Corporations. –**
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> **"(C) Government-Owned or Controlled Corporations, Agencies or Instrumentalities.**-The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Local Water District (LWD) and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity."
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On the other hand, **Section 119 of the Tax Code of 1997, as amended,** provides that:

> **"SEC. 119. Tax On Franchises.**- Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises. . . and on gas and water utilities, a tax of two percent (2%) on the gross receipts derived

from the from the business covered by the law granting the franchise:. . . . ."

A careful perusc of the afore-cited provisions of law disclosed that there are two types of taxes being imposed, to wit: **FIRST**, *the regular corporate income tax of thirty percent (30%) as prescribed in Section 27 (A) of the Tax Code of 1997, as amended,* and **SECOND**, *the two percent (2%) franchise tax as prescribed in Section 119 of the same Code.* As can be gleaned from the above, Local Water Districts, like the **CLARIN WATER DISTRICT** is exempt from the corporate income tax of thirty percent (30%), subject to compliance with the conditions set forth under Section 2 of R.A. 10026, which provides:

> **"SEC. 2. A new section, designated as Section 289-A under Chapter II, Title XI, of the same Code** is inserted to read as follows:
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> **"SEC.289-A. *Support for Local Water Districts.-*** The amount that would have been paid as income tax and saved by the local water district by virtue of its exemption to the income taxes shall be used by the local water district concerned for capital equipment expenditure in order to expand water services coverage and improve water quality in order to provide safe clean water in the provinces, cities, and municipalities: Provided, That, the water district shall adopt internal control reforms that would bring about their economic and financial viability: Provided, further, That the water district shall not increase by more than twenty percent (20%) a year its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles.
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> "All unpaid taxes or any portion thereof due from a local water district for the period starting August 13, 1996 until the effectivity date of this Act are hereby condoned by the Government subject to the following conditions: (1) that the Bureau of Internal Revenue, after careful review of the financial statements of a water district applying for condonation of taxes due, establishes its financial incapacity, after providing for its maintenance and operating expenses, debt servicing and reserve fund, to meet such obligations for the period stated herein: and (2) that the water district availing of such condonation shall submit to the Congress of the Philippines a program of internal reforms, duly certified by the local water utilities administration, that would bring about its economic and financial viability.

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> "All water districts, through the Local Water Utilities Administration, shall furnish the Committee on Ways and Means of the Senate and House of Representatives, respectively, on an annual basis, with statistical data and financial statements regarding their operations and other information as may be required, for purposes of monitoring compliance with the provisions of this Act and reviewing the rationalization for tax exemption privileges."

However, it is subject to the two percent (2%) franchise tax under section 119 of the Tax Code of 1997 as there are no express provisions in R.A. 10026 as circularized by Revenue Memorandum Circular No. 28-2010 exempting the local water districts from the said 2% franchise tax. ***(BIR Ruling No. 172-2012 dated March 14, 2012)***

It is fortified in **Section 5.116 (A) (4) (b) of Revenue Regulations No. 2-98, as amended,** which provides:

> **"SEC. 5.116. Withholding of Percentage Tax.-**
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> *Bureaus, offices and instrumentalities of the Government, including government-owned or controlled corporations as well as their subsidiaries, provinces, cities and municipalities making any money payment to private individuals, corporations, partnerships and/or associations are required to deduct and withhold the percentage taxes due from the payees on account of such money payments.*
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> **(A)Internal Revenue Taxes Required to be Withheld.-** *Percentage taxes on gross money payments to the following shall be subjected to withholding at the rates herein prescribed.*
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> **(4) Franchises.-**
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> XXX XXX XXX
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> **(b) On gross payments to franchises on gas and water utilities.** - Two percent (2%)
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From the foregoing, it is undisputed that bureaus, offices and instrumentalities of the government including GOCC's, their subsidiaries and local governments are required to deduct and withhold percentage taxes due from the water utilities. The two

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percent (2%) franchise tax to be withheld on the part of Local Water Districts, like **CLARIN WATER DISTRICT** is a creditable percentage tax withheld which can be applied against their franchise tax pursuant to Section 8 of Revenue Regulations No. 4-2002.

SUCH BEING THE CASE, by the clear and unmistakable language of the provisions of R.A. No. 10026, this Office holds that **CLARIN WATER DISTRICT** is exempt from the corporate income tax of thirty percent (30%) subject to compliance with the conditions set forth under Section 2 of R.A. 10026. It is to be emphasized, however, that it is subject to the two percent (2%) franchise tax as prescribed in Section 119 of the Tax Code of 1997, as amended.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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