REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Sec. 109(1)(L) of RA 9337; RR 8-15; RMC 40-15; R.A. No. 9520	000-00	#245-2018

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36/927-09-63

Date February 21, 2018

NEGROS DEL NORTE PLANTERS' ASSOCIATION MULTI-PURPOSE COOPERATIVE
VICMICO Compound, Victorias City
Negros Occidental 6119

Attention: Mr. Armin A. Evangelista
Manager

Gentlemen:

This refers to your letter dated September 21, 2017 requesting for confirmation of your opinion that the sale of sugar produce made by Negros Del Norte Planters' Association Multi-Purpose Cooperative ("NDNPAMPC" for brevity) is exempt from the payment of value-added tax (VAT) pursuant to Section 109(L) of Republic Act No. 9337 (National Internal Revenue Code).

Background

NDNPAMPC was first registered with the Cooperative Development Authority (CDA) with Certificate of Registration No. on August 16, 1999 under Republic Act (R.A.) No. 6938, otherwise known as the "Cooperative Code of the Philippines". On October 19, 2009, the CDA issued a New Certificate of Registration to NDNPAMPC under Article 144 of R.A. No. 9520, known as the "Philippine Cooperative Code of 2008" with Reg. No. . To date, NDNPAMPC remains a cooperative of good standing as evidenced by the issuance of Certificate of Compliance on March 17, 2017 with COC No. , valid until April 30, 2018.

NDNPAMPC is an agricultural cooperative and was formed after several sugarcane farmers from the northern portions of Negros Occidental voluntarily agreed to pool their resources to form a cooperative with the sole purpose of undertaking an economic enterprise to meet common needs, particularly by supplying the production inputs and/or any commodity needed by them and to exclusively market the produce of its members.

Being a multi-purpose cooperative, NDNPAMPC is an agricultural co-producers of the sugarcane produced by its cooperative members. Since NDNPAMPC is an artificial person, it is physically impossible to do the actual tillage of the land. Hence, the cooperative and its members jointly carry out the sugar farming activities during the agricultural crop year. The cooperative members have consistently provided the sugarland farms/plantations and the tillage while NDNPAMPC has primarily and directly provided its members with the various production inputs (fertilizers, chemicals, and facilities for cutting and hauling canes). capital, other services to increase productivity and technology transfer. It also acts as the exclusive marketing arm of the sugar produced from the various farms of its cooperative members. It is clear that NDNPAMPC as co-producer has direct and actual contribution in the sugarcane production of its members.

Undoubtedly, the existence of raw sugar from the sugarcane harvested by the cooperative members from their respective farms was made possible through the joint efforts of the cooperative and its members as "co-producers". With the co-production arrangement of the members with the cooperative, it allows the members to attain increased productivity and income through the promotion of equitable distribution of net surplus through maximum utilization of economies of scale, cost sharing and risk sharing under the generally accepted principles of cooperativism.

As the exclusive marketing arm of the harvested sugarcane from the various farms of its members, NDNPAMPC does not engage in the purchase of sugarcane by non-members. As such, the sugarcane produced by the cooperative members will be harvested, hauled, delivered and milled in the sugarmill, particularly Victorias Milling Company, in the name of NDNPAMPC by virtue of the membership agreement that the cooperative will be solely and exclusively tasked to market sugar, molasses, and other derivative products and thereafter, NDNPAMPC turns over to its members the net proceeds of the sale of the sugarcane produce. In instances where NDNPAMPC decides to further process the produced raw sugar of its members into refined sugar, the sugarmill issues refined sugar in the name of NDNPAMPC. Undeniably, NDNPAMPC has direct and active involvement in the sugarcane production of its members.

At present, NDNPAMPC is a holder of Tax Exemption Certificate No. dated September 1, 2016 pursuant to Republic Act (R.A.) No. 9520 and pertinent provisions of the NIRC.

In reply, please be informed that Section 109(1)(L) of RA No. 9337, as amended, and as implemented by Revenue Regulations (RR) No. 8-2015, provides, to wit:

> *"SEC. 109. Exempt Transactions. –*
>
> *(1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax.*
>
> *xxx xxx xxx*
>
> *L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;"*

Sec.5(b)&(c) of RR No. 8-2015, in turn provides:

> *"SECTION 5. Exemption from the Payment of the Advance VAT. — The following withdrawals shall be exempt from the payment of the advance VAT:*
>
> *xxx xxx xxx*

(b) Withdrawal of Sugar by Duly Accredited and Registered Agricultural Cooperative of Good Standing. — In the event the Sugar is owned and withdrawn from the Sugar Refinery/Mill by an agricultural cooperative of good standing duly accredited and registered with the Cooperative Development Authority (CDA), the withdrawal of Sugar for sale to members is not subject to advance VAT. The same shall also not be subject to advance Percentage Tax. Provided, however, that withdrawal of Sugar for sale to non-members is subject to payment of advance VAT or percentage tax if the agricultural cooperative is not the producer of Sugar. Provided, however, that any quedan or evidence of ownership showing the name of the cooperative together with another entity, natural or juridical, shall not be considered sales by an agricultural cooperative but by the other entity named therein, and are, therefore, not covered herein and are subject to advance business tax required under this Regulations. A cooperative must be a holder of a valid, current and subsisting Certificate of Tax Exemption which is issued in accordance with Revenue Memorandum Order No. 76-2010 dated September 27, 2010.

(c) Withdrawal of Sugar by Duly Accredited and Registered Agricultural Cooperative which is sold to another Agricultural cooperative. — If the owner of the Sugar as reflected in the quedan is an agricultural cooperative, the sale of the resulting Sugar to another agricultural cooperative is not subject to VAT pursuant to Sec. 109 (L) of the Tax Code. It shall also not be subject to advance Percentage Tax. Thus, if the seller-cooperative is not an agricultural producer but merely purchases the Sugar from planter, whether members or non-members, or transfer the Sugar to cooperative through assignment, its sale of the resulting sugar to another agricultural cooperative shall be subject to VAT and its withdrawal from the Sugar Refinery/Mill will only be allowed upon payment of the advance VAT or Percentage Tax in the RDO having jurisdiction over the place of business of the cooperative. Any quedan or evidence of ownership issued to cooperative together with another entity, natural or juridical, shall not be considered sale by the cooperative, but the entity named therein and are, therefore, not exempted from the advance business taxes required under this Regulations.

In relation thereto, Revenue Memorandum Circular (RMC) No. 40-2015, further clarified the provisions of RR No. 8-2015, viz:

*"**Section 3. <u>CLARIFICATION</u>:***

It is hereby clarified that a duly registered agricultural cooperative is said to be the producer of Sugar – consistent with the concept of a producer's cooperative being a joint production wherein raw materials or goods are produced by its members for processing into finished or processed products – if the following

requisites are present:

*(a) it is the tiller, **thru its members**, of the land it owns, or leases; **and***

(b) it incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

*The aforesaid requisites **must concur**. In the absence of any one of these requisites, an agricultural cooperative cannot be considered a producer of Sugar and, thus, its withdrawals of Sugar for sale to non-members or another agricultural cooperative are subject to advance VAT or Percentage Tax."* (Emphasis supplied)

From the foregoing provisions of RA 9337 and RR No. 8-2015, as clarified under RMC No. 40-2015, it is clear that the sale by agricultural cooperatives of their agricultural products to their members is exempt from VAT. However, with regard to the sale of their products to non-members, it will only be exempt from VAT if the following requisites are present:

1) the agricultural cooperative is of good standing and duly accredited and registered with the Cooperative Development Authority (CDA);
2) the agricultural cooperative must be a holder of a valid, current and subsisting Certificate of Tax Exemption which is issued in accordance with Revenue Memorandum Order No. 76-2010 dated September 27, 2010 and of good standing; and
3) the seller-agricultural cooperative is the producer of sugar, *i.e.*, it is the tiller, thru its members, of the land it owns, or leases and it incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

A cooperative is an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles. (Section 1, RA No. 9520)

Considering that the farmer-members of NDNPAMPC voluntarily agreed to pool their resources under their co-production arrangement, including the sugarland they own, to form a cooperative with the sole purpose of undertaking an economic enterprise to meet common needs, particularly by supplying the production inputs and/or any commodity needed such as capital (loan/cash advances), facilities for cutting and hauling canes, other services to increase productivity and technology transfer to exclusively market the produce of its members, said farmer-members and the NDNPAMPC is considered a single entity.

Thus, NDNPAMPC and its members' respective roles in the operation of the cooperative cannot be treated as separate and distinct from each other. NDNPAMPC is the tiller, thru its members, of the land it owns and that the same incurs cost of agricultural production of the sugar and produces the sugar cane to be refined because it primarily provided the various productions inputs (fertilizers), capital, technology transfer and farm management. In short, NDNPAMPC has direct participation in the sugarcane production of its farmers-members.

Accordingly, since NDNPAMPC meets all the requisites as above-mentioned to qualify for VAT and percentage tax exemption, this Office hereby confirms your opinion that the sale of sugar produce made by NDNPAMPC to its members as well as to non-members is exempt from the payment of VAT and/or percentage tax, pursuant to Section 109(1)(L) of R.A. No. 9337, as amended, and as implemented by RR No. 8-2015 and further clarified under RMC No. 40-2015. Consequently, the withdrawal of sugar to be made by NDNPAMPC is exempt from the payment of advance VAT and percentage tax.

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

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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