REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
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
S30.J -0252-2020
MAY 22 2020

DARAPUAY-KINUSKUSAN IRRIGATORS ASSOCIATION, INC.
Kinuskusan Bansalan,
Davao Del Sur 8005

Attention: ARMANDO E. MELCA
President

Gentlemen:

This refers to your letter dated October 21, 2016 applying in behalf of **DARAPUAY-KINUSKUSAN IRRIGATORS 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 of 1997, as amended.

It is represented that **DARAPUAY-KINUSKUSAN IRRIGATORS ASSOCIATION, INC.** with BIR Taxpaver's Identification Number (TIN) and Certificate of Registration Number dated January 01, 1999, is a non-stock, non-sectarian, and 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. and with SEC Certificate of Incorporation dated January 31, 1985; and that the purposes[1] for which the association was incorporated are:

1. *To initially serve as a foundation in strengthening Agrarian Reform and cooperative development programs of the government;*

2. *To help and cooperate in operating and maintaining the irrigation facilities and apartment structures by regulating and distributing the water supply equitably through the proper laws and regulation;*

3. *To serve as the channel between government and private agencies in the provisions of technical assistance and other support services concerning irrigated agriculture development and water management implementation at the farm level;*

4. *To act as the catalyzer for payment of loans, land amortization, irrigation fees, or for outright sale to previously determined buyer, as well as in the distribution of supplies intended for farmers to facilitate transactions between the farmers and the concerned parties;*

5. *To encourage participation of the farmers-irrigators in promoting a wholesome community life enhance community prosperity;*

6. *To serve as a vehicle for the speedy integration of resources, skills and talent of manpower for maximum productivity and economic advantage;*

[1] Articles II of the Articles of Incorporation of Darapuay-Kinuskusan Irrigators Association, Inc.

7. *To promote continuous cooperative work; and enhance the promotion of farm activities to benefit water-users;*

8. *To implement a planned thrift and savings program among the members; and*

9. *To cooperate or federate with similar association to spearhead the growth and development process of cooperativism.*

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*
>
> *(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; 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*".[2] "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*".[3]

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 of 1997, 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 Financial Statements of **DARAPUAY-KINUSKUSAN IRRIGATORS ASSOCIATION, INC.**, it was disclosed that the "Operation Expense" in the Statement of Revenue and Expenses represents service fees given to the Board of Trustees (BOT) and other workers for their services rendered to the association. The giving of service fees to the members of the BOT is considered a distribution of the equity (including the net income) of **DARAPUAY-KINUSKUSAN IRRIGATORS 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, **DARAPUAY-KINUSKUSAN IRRIGATORS ASSOCIATION, INC.**, cannot be qualified as a non-stock, non-profit corporation or association under Section 30 (J) of the National Internal Revenue Code of 1997, as amended.

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[2] Section 87, Corporation Code
[3] CIR vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960 dated 26 September 2012

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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.*"[4] 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.*"[5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **DARAPUAY-KINUSKUSAN IRRIGATORS 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, **DARAPUAY-KINUSKUSAN IRRIGATORS 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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REVENUE REGION NO. 19 – Davao City
Attention: Revenue District No. 115 – Digos City

[4] CIR vs. St. Luke's Medical Center, Inc. [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
[5] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, 6 October 2008].