May 7, 2019

BIR RULING NO. 262-19

RA No. 10026; Sec. 1, RMC No. 28-10; Sec. 119 of the Tax Code of 1997, as amended; RR No. 2-98, as amended; BIR Ruling No. 179-12

Carcar Water District
San Vicente Ferrer St., Cogon,
Poblacion I, Carcar, Cebu 6019

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 16, 2012, requesting in behalf of **CARCAR WATER DISTRICT** for the issuance of a Certificate of Tax Exemption pursuant to Republic Act (RA) No. 10026, entitled "An Act Granting Income Tax Exemption to Local Water Districts by Amending Section 27 (C) of the National Internal Revenue Code of 1997, as Amended, and Adding Section 289-A to the Code, for the Purpose," circularized under Revenue Memorandum Circular No. 28-10 dated March 22, 2010.

CARCAR WATER DISTRICT has been issued a Conditional Certificate of Conformance (CCC) by the Local Water Utilities Administration (LWUA) to operate as a public utility.

In reply thereto, please be informed that Section 1 of Revenue Memorandum Circular No. 28-2010, amplifying RA No. 10026, provides that —

> *"Sec. 27. Rates of Income Tax on Domestic Corporations.* —
>
> xxx xxx xxx
>
> *(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 Districts (LWD)** and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as

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are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

xxx xxx xxx"

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

A careful scrutiny of the above-mentioned provisions disclosed that there are two (2) types of taxes being imposed, first the regular corporate income tax of 30% as prescribed in Section 27 (A) of the Tax Code of 1997 and the other is the 2% franchise tax as prescribed in Section 119, *supra*. While local water districts, like **CARCAR WATER DISTRICT**, are exempt from the corporate income tax of 30% they are nevertheless subject to the 2% franchise tax as prescribed in Section 119 of the said Code as there is no express provisions in RA No. 10026 and Revenue Memorandum Circular No. 28-2010 exempting the local water districts from the said 2% franchise tax. *(BIR Ruling No. 179-12 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.* —

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.

(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.

xxx xxx xxx

(4) Franchises. —

xxx xxx xxx

(b) On gross payments to franchisees on gas and water utilities. — Two percent (2%)

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xxx xxx xxx"

SUCH BEING THE CASE, this Office holds that **CARCAR WATER DISTRICT** is exempt from corporate income tax pursuant to RA No. 10026 but subject to the 2% franchise tax as imposed 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,

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

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