April 2, 2018

BIR RULING NO. 565-18

Section 30 (J) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-2014; BIR Ruling No. 466-2014

Cabacungan Irrigators Association, Inc.
Cabacungan, Bulacan, Malalag, Davao Del Sur 8010

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 7, 2014 applying in behalf of **CABACUNGAN 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 (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 19, Davao City, through 1st Indorsement dated July 29, 2015.

It is represented that **CABACUNGAN IRRIGATORS ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000215824 dated October 24, 2008, 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. 0105160; 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 progress of the government;*

2. *To help and cooperate in operating and maintaining the irrigation facilities and appurtenant structures by regulating and distributing the water supply equitably thru proper irrigation water management in accordance with the existing laws of irrigations;*

3. *To serve as a channel for the government and private agencies in providing technical and financial assistance and other essential services concerning irrigated agriculture developments and water management implementation*

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at farm level;

4. *To act as the catalyzer for payment of loans, land amortizations, irrigation service fees, or for outright sale of farm produce to pre-determined buyer, as well as in distribution of farm supplies intended for farmers and to facilitate similar farm transactions between the farmers and the concerned parties;*

5. *To encourage participation of the farmer-irrigators in promoting wholesome community life;*

6. *To serve as a vehicle for the proper integration of resources, skills and talent of irrigation water users for maximum productivity and economic advantage;*

7. *To promote continuous group action or cooperative work thereby enhancing the execution of farm activities to benefit the water users;*

8. *To implement planned thrift and savings progress among its members;*

9. *To promote the conduct containing education and or training programs for members/officers as part of the development process; and*

10. *To cooperate or federate to with similar associations 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; x x x"*

"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*

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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; x x x.*

In the submitted documents of **CABACUNGAN IRRIGATORS ASSOCIATION, INC.**, it was disclosed that the Board of Trustees receive four hundred pesos (P400.00) per month. [4] Also, service fees are being given to the Board of Trustees and other workers such as water masters, gatekeepers, collectors for their extra services rendered to the Association for the operation and maintenance of its irrigation system; [5]

The giving of four hundred pesos (P400.00) per month and service fees to the members of the Board of Trustees are considered distributions of the equity (including the net income) of **CABACUNGAN IRRIGATORS ASSOCIATION, INC.** These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit corporation. These acts violate 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, **CABACUNGAN 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.

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."* [6] 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."* [7] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **CABACUNGAN 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, **CABACUNGAN 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

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Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Article II, Articles of Incorporation.
2. Section 87, Corporation Code.
3. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
4. Certification under Oath by BBB, the IA _____, as to the amount of incentives paid by the association to its trustees, officers and other executive officers.
5. Certification under Oath by AAA, the IA _____, as to the Association's disposition of income and contemplated expenditures.
6. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
7. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

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