April 2, 2018

BIR RULING NO. 567-18

Section 30 of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 466-2014

Badoma Irrigators' Service Association, Inc.
Brgy. Dolo, Bansalan, Davao del Sur

Attention: *AAA*

Gentlemen :

This refers to your application for the issuance of a Tax Exemption Certificate pursuant to 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 August 17, 2015.

It is represented that **BADOMA IRRIGATORS SERVICE ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000616277 dated May 11, 1999, is a non-stock, 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. 80224; and that one of the purposes for which the association was incorporated is "*to construct, acquire, own, hold, manage, control, operate and maintain a communal irrigation system.*"

In reply, please be informed that Section 30 of the National Internal Revenue Code 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

Copyright 2020 CD Technologies Asia, Inc.

(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."* [1] "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."* [2]

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, 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 xxx xxx

6. When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose. Accordingly, its constitutive documents must expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purpose.

In the submitted documents of **BADOMA IRRIGATORS SERVICE ASSOCIATION, INC.**, it was disclosed that the Board of Trustees are receiving a minimal *per diem* of P300 per meeting per month, [3] incentives are being given to the Board of Trustees, other officers, and other workers for their services rendered to the Association in supervising the irrigation system to provide sufficient water supply needed by the members for their rice production, [4] and bonuses are being given to the Board of Trustees and/or water master. [5] Moreover, its Amended By-Laws states that after dissolution, any surplus assets after the payment of liquidation expenses and all debts of the association may be donated to any community project, with their economic, educational, cultural, or social, or may be prorated among members and officers of the association depending upon the final decisions of the entire membership. [6]

The giving of *per diem*, bonuses, and other incentives to the members of the Board

Copyright 2020 CD Technologies Asia, Inc.

of Trustees are considered distributions of the equity (including the net income) of **BADOMA IRRIGATORS SERVICE ASSOCIATION, INC.**, along with the distribution among the members and officers of any surplus assets after the payment of liquidation expenses and all debts of the association. 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, **BADOMA IRRIGATORS SERVICE 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.*" [7] 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.*" [8] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **BADOMA IRRIGATORS SERVICE 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, **BADOMA IRRIGATORS SERVICE 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,

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

Footnotes

1. Section 87, Corporation Code.
2. *CIR vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960 dated 26 September 2012.
3. Certification under Oath by BBB, the IA _____.
4. Certification under Oath by CCC, the IA _____, as to the Association's disposition of income; Statement of Revenue and Expenses, 2014, 2013 and 2012 Audited Financial Statements of the Association.

Copyright 2020 CD Technologies Asia, Inc.

5. Statement of Revenue and Expenses, 2013 and 2012 Audited Financial Statements of the Association.
6. Section 2, Article XV, Amended By-Laws.
7. *CIR vs. St. Luke's Medical Center, Inc.* (G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
8. *Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation* [G.R. No. 166408, 6 October 2008].

Copyright 2020 CD Technologies Asia, Inc.