April 2, 2018

BIR RULING NO. 568-18

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

Savoy Farmer Irrigators Association (SAFIA), Inc.
Savoy, Matanao, Davao Del Sur 8003

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 12, 2013 applying in behalf of **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 of the National Internal Revenue Code of 1997, as amended, which was forwarded to this Office by Revenue Region No. 19, Davao City, through 1st Indorsement dated November 2, 2015.

It is represented that **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000465542 dated April 16, 2001, 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. D2000 and with SEC Certificate of Incorporation dated February 23, 2000; and that the purposes [1] for which the association was incorporated are:

1. *To cooperate in the operation and maintenance of the irrigation system or a portion thereof with National Irrigation Administration (NIA) in preparation for the eventual turn-over of the same under such terms and conditions that the NIA Board may impose;*

2. *To serve as a channel for government and private agencies in providing technical and financial assistance to farmer-members;*

3. *To establish, maintain and operate economic/livelihood activities and services for its members;*

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4. *To assist or act as an agent or representative of its members in marketing their produce;*

5. *To acquire loans from the government through any of its lending institutions for productive agricultural purposes; and*

6. *To do and perform any other acts and to exercise other power which may be necessary, convenient and appropriate to accomplish the purpose for which the association is organized.*

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 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 **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), INC.**, it was disclosed that the Board of Trustees are

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receiving forty percent (40%) of the ISF Share given by NIA and are being divided among themselves. [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 systems. [5]

The forty percent (40%) of the ISF Share given by NIA and are being received and divided among the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), INC.**, along with the service fees which 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. 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, **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), 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 **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), 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, **SAVOY FARMER IRRIGATORS ASSOCIATION (SAFIA), 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

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Footnotes

1. Second Provision, Articles of Incorporation of Savoy Farmers Irrigators Association (SAFIA), Inc.
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 _____.
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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