April 2, 2018

BIR RULING NO. 570-18

Section 30 (C) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14; BIR Ruling No. 151-2014

Bulakin-1 Water Supply and Sanitation Association, Inc.
327, Brgy. Bulakin-1, Dolores, Quezon

Attention: *AAA*

Gentlemen :

This refers to your application for the issuance of a Certificate of Tax Exemption pursuant to Section 30 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 09, San Pablo City, through 4th Indorsement dated November 05, 2015.

It is represented that **BULAKIN-1 WATER SUPPLY AND SANITATION ASSOCIATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 1RC0000752080 dated November 09, 2007, 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. CN200717152 and with SEC Certificate of Incorporation dated November 09, 2007; and that the purposes [1] for which the association was incorporated are:

1. *To organize the residents of Bulakin-1 into a solid bond of harmonious relationship and to bolster the spirit of the brotherhood;*

2. *To work for continuous water supply and sanitation which will enhance the health and living conditions of every family in Bulakin-1 especially members of the association;*

3. *To find ways and means to raise funds in order to improve the facilities and services of the organization;*

4. *To do everything necessary for the realization of any and all of the purpose, objectives, or furtherance of any of the powers herein set forth. To do*

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everything and incidental thereto or connected therewith provided the same is not contrary or forbidden by the Laws of the Republic of the Philippines;

5. *To develop and harness the people's participation in every economic activity towards the development of the community through self-help and self-reliance; and*

6. *To offer and provide the members including their families opportunities to participate actively in any program relative to the promotion and encouragement of small business entrepreneurs.*

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 (C) 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
>
> *(C) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a non-stock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or non-stock corporation or their dependents; 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, 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;*

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In the submitted documents of **BULAKIN-1 WATER SUPPLY AND SANITATION ASSOCIATION, INC.**, it was disclosed that the Board of Trustees are receiving salaries, honorarium, and *per diems*. [4]

The giving of salaries, honorariums, *per diems*, and other incentives to the members of the Board of Trustees are considered distributions of the equity (including the net income) of **BULAKIN-1 WATER SUPPLY AND SANITATION 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, **BULAKIN-1 WATER SUPPLY AND SANITATION ASSOCIATION, INC.** cannot be qualified as a non-stock, non-profit corporation or association under Section 30 (C) 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."* [5] 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."* [6] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **BULAKIN-1 WATER SUPPLY AND SANITATION ASSOCIATION, INC.** to be exempted from income tax on its income as a Section 30 (C) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **BULAKIN-1 WATER SUPPLY AND SANITATION 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

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1. Second Provision of the association's 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. Financial statements of the Association and the original copy of the Certification under Oath by the Treasurer of the Association.
5. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
6. *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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