April 13, 2018

BIR RULING NO. 692-18

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

Pollution Control Association of the Philippines, R-1, Inc.
2/F Marcela Building, Poblacion East,
Rosario, La Union

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 01, 2015 applying on behalf of **POLLUTION CONTROL ASSOCIATION OF THE PHILIPPINES, R-1, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 1, Calasiao, Pangasinan, through 2nd Indorsement dated February 29, 2016.

It is represented that **POLLUTION CONTROL ASSOCIATION OF THE PHILIPPINES, R-1, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 4RC0000359912 dated March 31, 2008, is a non-stock, non-profit corporation 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. CN200630417; and that the purposes [1] for which the corporation was incorporated are:

PRIMARY PURPOSE:

To foster among its members high ideals of responsibility, dedication and concern for the preservation, protection, enhancement, maintenance and stewardship of a healthy and clean environment.

SECONDARY PURPOSES:

1. *To promote cleaner production, waste minimization and pollution prevention among top managers, decision and policy makers of industry and*

Copyright 2020 CD Technologies Asia, Inc.

general public;

2. *To serve as effective communication link between industries, Non-Governmental Organization, academe and government regulatory agencies on environment protection, cleaner production and waste minimization, thereby facilitating and accelerating regulatory compliance;*

3. *To serve as forum for the exchange of ideas and formulation of strategies to address pollution and environment issues;*

4. *To promote the general welfare of its members as well as the growth and success of the association; and*

5. *To coordinate and cooperate with other organizations, both local and foreign, on issues related to the environment.*

In reply, please be informed that Section 30 of the NIRC of 1997, as amended, enumerates the entities qualified as a non-stock and/or non-profit corporation/association/organization exempt from income tax.

"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 NIRC, 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

In the submitted Audited Financial Statements of **POLLUTION CONTROL ASSOCIATION OF THE PHILIPPINES, R-1, INC.** for the years 2012, 2013 and 2014, it was disclosed that the Board of Trustees are receiving Honorarium, as shown in its Comparative Statement of Income and Expense.

The giving of honorarium to the Board of Trustees is considered distribution of the net income of **POLLUTION CONTROL ASSOCIATION OF THE PHILIPPINES, R-1, INC.** It is a form of inurement which the law prohibits in the organization and

Copyright 2020 CD Technologies Asia, Inc.

operation of a non-stock, non-profit corporation. This act violates 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.

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."* [4] 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."* [5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **POLLUTION CONTROL ASSOCIATION OF THE PHILIPPINES, R-1, INC.** to be exempted from income tax on its income as a Section 30 institution is hereby denied as it failed to prove that it is a non-profit corporation or association. Therefore, it shall be subject to thirty percent (30%) corporate income tax pursuant to Section 27 (A) of the NIRC of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. Second Article, Amended 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. *CIR vs. St. Luke's Medical Center, Inc.* [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].
5. *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.