November 29, 2019

BIR RULING NO. 705-19

Section 30 (E) of the NIRC of 1997, as amended; BIR Ruling No. 718-2018; RMO 20-2013 & RMC 51-2014

Isabang Lucena City Pinagkaisa
Homeowners Ass., Inc.
Brgy. Isabang, Lucena City, Quezon 4301

Attention: *AAA*

Gentlemen :

This refers to your letter requesting on behalf of **ISABANG LUCENA CITY PINAGKAISA HOMEOWNERS ASS., INC.,** for tax exemption certificate being enjoyed by a non-stock, non-profit corporation or association organized under Section 30 (C) of the Tax Code of 1997, as amended.

It is represented that the **ISABANG LUCENA CITY PINAGKAISA HOMEOWNERS ASS., INC.** with Taxpayer's Identification No. 000-000-000-000 and Certificate of Registration No. OCN 1RC0000927785, is a non-stock, non-profit corporation registered with the Housing and Land Use Regulatory Board bearing HLURB Registration No. 20-225; and that the primary purpose [1] for which it was incorporated is to facilitate the delivery of adequate social and economic services with the end view of improving the quality of life of its members.

In reply, please be informed that Section 30 (C) of the National Internal Revenue Code (NIRC) 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 nonstock 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

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nonstock corporation or their dependents;" (Emphasis supplied)

"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 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 Tax 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. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances. Prohibited inurement includes the payment of compensation, salaries, or honorarium to its trustees or organizers.

A perusal of the documents submitted shows that, under Section 10 Article V of the By-Laws, [4] the Directors are entitled to receive per diem for actual attendance to the meeting in such amount as may be determined by majority of the members of the association. Giving of per diem to the Board of Directors is considered distribution of equity (including the net income) and a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act is not in accordance with the definition of "non-profit" 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 association's purposes and all its activities conducted not for profit." Thus, **ISABANG LUCENA CITY PINAGKAISA HOMEOWNERS ASS., INC.**, cannot be qualified as a non-stock, non-profit corporation under Section 30 (C) of the Tax 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]

In view of the foregoing, the request of **ISABANG LUCENA CITY PINAGKAISA HOMEOWNERS ASS., 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-stock, non-profit corporation. Therefore, **ISABANG LUCENA CITY PINAGKAISA HOMEOWNERS ASS., INC.** shall be treated as an ordinary corporation subject to thirty percent (30%) income tax rate pursuant to Section 27 (A) and

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other applicable internal revenue taxes imposed by the Tax Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. 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. By-Laws, adopted on April 8, 2013.
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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