April 16, 2018

BIR RULING NO. 718-18

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

Asociacion De Hacenderos De Silay-Saravia, Incorporated
AHSSI Bldg., Rizal Street, Cabahug Subdivision
Silay City, Negros Occidental

Attention: *AAA*

Gentlemen :

This refers to your letter dated, dated December 7, 2013, applying on behalf of **ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED** for a Certificate of Tax Exemption enjoyed by non-stock, non-profit corporation or association under Section 30 (J) of the National Internal Revenue Code (NIRC) of 1997, as amended.

It is represented that ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000360067 dated February 9, 2011, 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. 9646; and that the purposes [1] for which the association was incorporated are:

1. *To promote, enhance and protect the interest and welfare of the planters of the Silay-Saravia District and that of their employees and laborers*;

2. *To create, promote and maintain harmonious and friendly relations between the Planters and the Mill; between the members of the association; and between the planters and their employees and laborers*;

3. *To help in an intelligent and just interpretation of the terms and*

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conditions of the milling contract with the mill and to see to it that the same are duly, adequately and properly complied with by both the mill and the Planters;

4. *To help the Planters in securing and obtaining from the mill the necessary, just and reasonable aid/s needed by them in connection with the work in their plantation and also to render all possible help and assistance to the members*;

5. *To create, establish and maintain services or agencies which would be of help and benefit to the members*;

6. *To act as the sole agent of the planters in their dealings with the Mill during the period and the milling contract*;

7. *And to assume all the obligations and liabilities that may be existing against the "Asociacion de Hacenderos de Silay-Saravia"; and also to assume and be subrogated to all whatever rights, interest and obligations which may be existing in favor of the "Asociacion de Hacenderos de Silay-Saravia" and also to all its assets and property.*

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.*
>
> xxx xxx xxx"

"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*

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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";*

In the submitted documents of ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED, it was disclosed that the members of the Board of Directors are entitled to per diems. Article Eighteen, of the Amended By-Laws states that:

> *"The Board of Directors shall hold a meeting at least once a month, in the office of the association or any convenient place which the President may designate to deliberate and take action on whatever cases and subject matters which they would deem necessary for the proper function and administration of the Association. The date of their monthly meetings shall be discretionary on the part of the Board of Directors but it must be fixed and determined by them in their first meeting subsequent to their election. The presence of eight (8) members shall constitute a quorum and all resolutions passed and approved by the majority of this quorum shall be valid and binding. The* ***members shall receive a per diem for every board meeting attended, the amount of which shall be fixed by the members****."*

The giving of per diems to the members of the Board of Directors is considered a distribution of the equity (including the net income) of ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED. This is a form of private inurement which the law prohibits in the organization and 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. Thus, ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED cannot be qualified as a non-stock, non-profit corporation 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."* [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 ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED 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, ASOCIACION DE HACENDEROS DE SILAY-SARAVIA, INCORPORATED 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. Amended Articles of Incorpotion, adopted on March 3, 2017.
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].

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