April 30, 2018

BIR RULING NO. 753-18

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

Davao Mill District Development Council (DMDDC) Foundation, Inc.
DASUCECO Compound, Guihing Hagonoy,
Davao Del Sur

Attention: *AAA*

Gentlemen :

This refers to your letter dated February 23, 2015 applying on behalf of **DAVAO MILL DISTRICT DEVELOPMENT COUNCIL (DMDDC) FOUNDATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (A) 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 July 13, 2015.

It is represented that **DAVAO MILL DISTRICT DEVELOPMENT COUNCIL (DMDDC) FOUNDATION, INC.** with BIR Taxpayer's Identification No. (TIN) 000-000-000-000 and Certificate of Registration No. OCN 2RC0000627901 dated August 22, 2002, 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. D200000506; that the purposes [1] for which the organization was incorporated are:

> *To promote, facilitate, and coordinate the efforts of the sugar planters, millers and workers relating to research, science and development in the production, processing, marketing, utilization, distribution, technological, industrial, management, financial, economic and other aspects of the sugar industry as well as to encourage or undertake extension and support activities, including technical assistance, manpower training, advisory and information dissemination, in favor of planters, millers, workers and others involved in said industry on an integrated, dynamic and sustained level, of its own, or in conjunction, collaboration or coordination with any office or entity, its successors, or other organizations, individuals, agencies, or institutions concerned, government or private, or non-government organizations, with a view to promoting the development and*

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enhancing the viability and global competitiveness of the sugar industry and improving the lot of everyone involved in said industry except the management of funds, portfolios, securities and other similar assets of the managed entity.

In the furtherance thereof, the Foundation shall:

1. *Institute and promote a sugar research, studies and development program as well as establish and operate facilities or centers that will undertake activities to carry out such program on a dynamic and continuing basis, on its own or jointly with others;*

2. *Monitor, evaluate, and review problems, constraints and prospects facing the sugar industry, conduct and coordinate studies regarding the same, and hold consultations with members of the industry as well as professionals or experts and scientists, locally or abroad, in the relevant field in order to find solutions and develop strategic plans to address such problems and constraints to take full advantage of prospects;*

3. *Provide technical assistance to sugar producers, workers and millers in improving efficiency in all aspects of their operations and pursuing effective investment strategies by conducting training programs, workshops, seminars and lectures aimed at increasing their knowledge of production technologies as well as manpower development, market potentials and prospects, and providing technical advisory services and means of transferring technology from the research laboratories to the industry;*

4. *Organize and conduct training programs, conferences, seminars, forums, workshops and lectures for the Foundation's management and personnel and those of the sugar mills and plantations, grant or facilitate scholarships for technical or management studies, both here and abroad, to promising individuals who are willing to share their learning and skills with others in the industry, in order to advance their technical and management competence pursuant to an effective human resource development program for the sugar industry;*

5. *Establish linkages with various government and private research institutions, both local and foreign, for the conduct of studies and research designed to promote the production, processing, marketing, and distribution of sugar, and when appropriate, require, grant or review the accreditation of millers, planters; and other people organizations to undertake research and development on its behalf;*

6. *Coordinate, support and assist the Sugar Regulatory Administration, PHILSURIN, or other government agencies, or its successors, relative to the formulation and implementation of the government's sugar research and development promotion programs and policies including those relating to the programs and physical infrastructure and provision of technical, industrial and marketing support and services;*

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7. *Recommend to the President of the Republic, SRA, NGO's other entities, or its successors, or to any appropriate agency, any proposed legislation, rules and regulations that will contribute to the development of the sugar industry towards a broader and more comprehensive participation in government policy and decision making by the private sector pertaining to sugar research and development through constant consultation with the government agencies concerned;*

8. *Publish and issue books, studies, literatures and disseminate any information, research findings, studies, reports, policies and other materials relevant to the development of any aspects of the sugar industry and inform the various industry organizations and all concerned of the activities and operations of the Foundation to make them aware of the kind assistance that the Foundation can provide them as well as elicit their support in carrying out the various activities of the Foundation;*

9. *To establish, maintain and operate an information center and library which will make available, among other things, a collection of literature, information and materials on sugar and all aspects of the sugar industry;*

10. *To acquire or obtain from any government authority, national, municipal or local, or otherwise and from any corporation, association, person or entity, such charters, franchises, licenses, rights, privileges, assistance, financial or otherwise, and concessions as are conducive to and necessary for the attainment of the purposes of the Foundation;*

11. *Acquire by purchase, lease or otherwise any property, real, personal or mixed, which may be necessary, useful or beneficial, directly or indirectly to the pursuit and attainment of the purpose and objects of the Foundation;*

12. *Invest the monies of the foundation not immediately required for its operation in such securities and in such manner as the Board of Trustees may determine from time to time; provided, that the net profits derived therefrom shall not inure to the benefit of any trustee, officer, member, or any private individual, but shall be exclusively for the maintenance and carrying out of the objectives of the Foundation;*

13. *Borrow or raise, and give security for money, by the issue of bonds, debentures, stocks, bills of exchange, promissory notes or other obligations or securities of the Foundation, or by mortgage or charge upon all or any part of the property of the Foundation;*

14. *Raise funds from contributions by, and assessment on, the members as well as from liens on sugar produced or milled at a rate approved by the Board of Trustees;*

15. *Solicit and accept grants, endowments, gifts, donations, bequests, devises and other forms of contributions or financial assistance from other individuals, corporations, associations, agencies and other institutions in*

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order to raise funds for any of the purposes of the foundation; and

16. *Do such other lawful things as are incident, conducive, reasonably necessary or proper to the attainment of the above purposes of the Foundation or any one of them.*

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 (A) 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:*
>
> *(A) Labor, agricultural or horticultural organization not organized principally for profit;*
>
> 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 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

6. *When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose. x x x.*

In the submitted Audited Financial Statements of **DAVAO MILL DISTRICT DEVELOPMENT COUNCIL (DMDDC) FOUNDATION, INC.** for the years 2012, 2013, and 2014, an account for "Directors Allowance" consistently appears as a deduction from its Revenues on the operations for subsidized tractor and heavy

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equipment services.

Moreover, Section 3, Article V, of the submitted New By-Laws of **DAVAO MILL DISTRICT DEVELOPMENT COUNCIL (DMDDC) FOUNDATION, INC.** provides that:

> *"Section 3. Division of Assets among Members. — After the payment of all obligations, each specific property acquired by the Foundation using funds generated by special assessments shall be divided among the members in proportion to their respective contributions or payments on such special assessments for the acquisition of such specific properties. x x x."*

The giving of allowances to the Board of Trustees/Directors and the division of asset among the members after dissolution of the Foundation are considered distributions of the net income of **DAVAO MILL DISTRICT DEVELOPMENT COUNCIL (DMDDC) FOUNDATION, INC.** These are forms of inurement 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.

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 **DAVAO MILL DISTRICT DEVELOPMENT COUNCIL (DMDDC) FOUNDATION, INC.** to be exempted from income tax on its income as a Section 30 (A) corporation or association 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

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1. Second Provision, 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].

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