December 9, 2019

BIR RULING NO. 769-19

PD 269; BIR Ruling No. 398-13

Aklan Electric Cooperative, Inc.
Lezo, Aklan

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 22, 2012 requesting for a tax exemption certification by way of ruling pursuant Section 39 (a) (1) of Presidential Decree (PD) No. 269.

It is represented that AKLAN ELECTRIC COOPERATIVE, INC. (AKELCO) with Tax Identification Number 000-000-000-000 is registered with the National Electrification Administration (NEA) as a non-stock, non-profit member-owned electric cooperative bearing Certification No. 010, issued on June 5, 1978; that it is formed primarily for the purpose of supplying, promoting and encouraging the fullest use of electric service to its members on an "area coverage."

In reply, please be informed that Section 39 of PD No. 269 provides:

> ***Section 39***. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:*
>
> *(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit*

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fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.

However, PD No. 1955 was enacted by then President Ferdinand E. Marcos. It withdrew all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts, and other charges granted to private business enterprises and/or persons engaged in any economic activity.

On January 8, 1986, PD No. 2008 was issued, requiring the Minister of Finance to immediately restore the tax exemption of all electric cooperatives. However, in December 1986, then Pres. Corazon C. Aquino issued Executive Order (EO) No. 93 which withdrew all tax and duty exemptions granted to private entities effective March 10, 1987. But Memorandum Order No. 65, dated January 23, 1987, suspended the implementation of the said EO until June 30, 1987 for cooperatives. Effective July 1, 1987, Fiscal Incentives Regulatory Board (FIRB) No. 24-87 restored the tax and duty exemption privileges of electric cooperatives under PD No. 269. FIRB Resolution No. 24-87 reads:

"BE IT RESOLVED, as it is hereby resolved, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefore and declaring a national policy objective for the total electrification of the Philippines on an area coverage basis; the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, are restored effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable: Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment.

(SGD.) JAIME V. ONGPIN
Secretary of Finance

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Chairman, FIRB"

In the case of *Ernesto M. Maceda vs. Hon. Catalino Macaraig, Jr., in his capacity as Executive Secretary, Office of the President, Hon. Vicente Jayme, etc., et al.*, [1] where the Supreme Court sitting *en banc* clarified issues relative to the restoration of the FIRB of the tax exemption privileges of NPC after being withdrawn under EO No. 93 (S'86) issued by President Aquino. Its Section 2 allowed the NPC to apply for the restoration of its tax exemption privileges. The same was granted under FIRB Resolution No. 17-87 dated June 24, 1987 which restored NPC's tax exemption privileges effective, starting March 10, 1987, the date of effectivity of EO No. 93 (S'86). The Supreme Court held:

> *"It should be noted that NPC was not asking to be granted tax exemption privileges for the first time. It was just asking that its tax exemption privileges be restored. It is for these reasons that, at least in NPC's case, the recommendation and approval of NPC's tax exemption privileges under FIRB Resolution Nos. 10-85 and 1-86, done by the same person acting in his dual capacities as Chairman of the Fiscal Incentives Review Board and Minister of Finance, respectively, do not violate procedural due process.*
>
> *While as above-mentioned, FIRB Resolution No. 17-87 was approved by President Aquino on October 5, 1987, the view has been expressed that President Aquino, at least with regard to E.O. 93 (S'86), had no authority to sub-delegate to the FIRB, which was allegedly not a delegate of the legislature, the power delegated to her thereunder.*
>
> *A misconception must be cleared up.*
>
> *When EO No. 93 (S'86) was issued, President Aquino was exercising both Executive and Legislative powers. Thus, there was no power delegated to her, rather it was she who was delegating her power. She delegated it to the FIRB, which, for purposes of E.O. No. 93 (S'86), is a delegate of the legislature. Clearly, she was not sub-delegating her power.*
>
> *And E.O. No. 93 (S'86), as a delegating law, was complete in itself — it set forth the policy to be carried out and it fixed the standard to which the delegate had to conform in the performance of his functions, both qualities having been enunciated by this Court in Pelaez vs. Auditor General."*

Along these lines, the Supreme Court, in the case of *Davao Oriental Electric Cooperative, Inc. vs. The Province of Davao Oriental*, [2] recognized the validity of FIRB Resolution No. 24-87 in settling the issue of whether or not the restoration of the tax exemption under FIRB Resolution No. 24-87 was not retroactive to the date of effectivity of PD 1955.

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"First, we resolve the issue of retroactivity of FIRB Resolution No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB Resolution No. 24-87 is crystal clear in stating that "the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 . . . are restored effective July 1, 1987." There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says."

Inasmuch as the FIRB Resolution No. 24-87 issued on June 14, 1987, which, however, expressly provides that "***income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable***," thus, restoring the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of EO No. 93 which has been declared as a valid delegation of legislative power pursuant to the Maceda case, there is no question that an electric cooperative established under PD 269 is entitled to the tax exemption privileges subject to the conditions stated in the FIRB Resolution.

Accordingly, this Office opines that AKELCO's income from its electric service operations is subject to income tax pursuant to FIRB Resolution No. 24-87.

Beginning January 1, 2009, AKELCO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended on December 31, 2008, the thirtieth full calendar year after the date of the cooperative's organization [3] as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing, whichever event comes first. (BIR Ruling No. 398-2013 dated November 4, 2013)

Moreover, all Electric Cooperatives registered with the NEA, shall be subject to the following:

1. 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines;

2. 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system;

3. Capital Gains Tax on sales or exchanges of real property classified as capital assets or shares of stock;

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4. Documentary stamp taxes on transactions of cooperatives dealing with non-members, except transactions with banks and insurance companies, Provided that whenever one party to the taxable document enjoys the exemption from DST, the other party who is not exempt shall be the one directly liable for the tax;

5. VAT billed on purchases of goods and services;

6. Value-added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity; and

7. All other taxes for which the ECs are not otherwise expressly exempted by any law.

Upon the effectivity of R.A. 9337, the exemption from VAT of electric cooperatives was removed. Consequently, Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, particularly Section 4.108-2 (13) and Section 4.108-3 (f) provide that sales of electricity by generation, transmission, and/or distribution companies are now subject to now 12% VAT on their gross receipts. Provided, however, that sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

Therefore, electric cooperatives are now subject to VAT on their gross receipts pursuant to R.A. 9337, as implemented by RR 16-2005, as amended.

It should be noted that nothing in the aforesaid RMC No. 72-2003 or RR No. 20-2001 shall preclude the examination of the books of accounts or other accounting records of AKELCO by duly authorized internal revenue officers for internal revenue tax purposes only.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

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

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Footnotes

1. G.R. No. 88291, May 31, 1991.
2. G.R. No. 170901, January 20, 2009.
3. AKELCO was organized on June 5, 1978, hence, the exemption granted under PD 269 already ended on December 31, 2008 which is "December 31 of the thirtieth full calendar year after the date of its organization."

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