December 9, 2019

BIR RULING NO. 775-19

Section 287, RA 8424

Honorable Jose A. Arpilleda
Municipal Mayor, Madrid
Province of Surigao del Sur

Dear Mayor Arpilleda :

This refers to your Position Paper dated 27 November 2015, requesting for the release *in toto*, the share of your local government unit from the collection derived by the Bureau of Internal Revenue (BIR) from mining taxes paid by Marcventures Mining and Development Corporation (MMDC) notwithstanding that there are other claimants requesting for the release of the same.

It is represented that the Municipality of Madrid was created as a regular municipality of Province of Surigao by virtue of Executive Order No. 561 dated February 2, 1953; that, the National Government through its agency, the Bureau of Forestry of the defunct Department of Agriculture and Natural Resources, has granted Communal Forest Parcel-1 in Sitio Opacon which was lawfully taken and separated from the Municipality of Cantilan was assigned, transferred, and established to, and for Madrid by virtue of the powers vested upon the Director of Forestry under Section 1839, Act No. 3388; that, the Communal Forest Parcel-1 of Madrid is where the actual extraction site of Minerals and other deposits operated by MMDC since 2011; that, the other claimant is the Municipality of Cantilan, Surigao del Sur; that, the Claimant Municipality of Cantilan alleges that the said Communal Forest Parcel-1 is within its territorial jurisdiction of the municipality and the actual extraction site is located within Barangay Cabangahan, Municipality of Cantilan, Province of Surigao del Sur; that, on November 6, 2015, the Office of the Sangguniang Bayan of Cantilan, promulgated a Resolution entitled "A Resolution Expressing the Intention of the LGU of Cantilan to Exclusively Claim Its Share in the National Wealth Derived from the Operations of Marcventures Mining and Development Corporation Within the Territorial Jurisdiction of Cantilan, Surigao del Sur"; that, on November 11, 2015, the Tanggapan ng Sangguniang Panlalawigan of Surigao del Sur held a special meeting for the purpose of executing a Memorandum of Agreement (MOA) between municipalities of Cantilan, Carrascal and

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Madrid in the sharing of the aforementioned municipalities in the national wealth extracted from the Communal Forest Parcel-1; and that, in the said special meeting, no agreement was reached due to conflicting claims between the parties, hence, it was declared suspended until further notice.

In reply, please be informed that Section 287 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:

> *"**SECTION 287. Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth**. — Local government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.*
>
> ***(A) Amount of Share of Local Government Units**. — Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year **from excise taxes on mineral products**, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its **share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction**."*

As represented, there are two conflicting claimants to the shares, to wit:

1. First, the claim of the Municipality of Madrid is based on the declaration of the Bureau of Forestry of the defunct Department of Agriculture and Natural Resources of Communal Forest Parcel. The purpose of the grant is for the continued supply of forest products necessary for their home use and sufficient pasture for their animals, and to that end the Director of Forestry may prescribe the species and size of the trees that may be cut, the manner of removal of such trees or other forest products, stone, or earth, and the conditions under which pastures may be occupied.

   It is noted that based on the representation in the special meeting, the communal forest is located within the territorial jurisdiction of Cantilan; and

2. Second, the Municipality of Cantilan claims that the mineral being extracted by MMDC are coming from its territorial boundaries and the rights acquired by Municipality of Madrid by virtue of the declaration by Bureau of Forestry pertain only to the gathering of lumber construction materials for domestic use.

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It is likewise noted that the Mines and Geosciences Bureau Regional Office No. XIII of the Department of Environment and Natural Resources (DENR) has issued a certification dated March 11, 2014 stating that:

> *"Please be informed that the **Communal Forest Parcel-1** falls within the Mineral Production Sharing Agreement (MPSA) of **Marcventures Mining and Development Corporation** denominated as MPSA No. 016-93 XIII.*
>
> *Be informed further that the entire area of the said Communal forest is within the jurisdiction of the Municipality of Cantilan, and the actual extraction site of the aforementioned tenement holder is located within Barangay Cabangahan, Municipality of Cantilan, Province of Surigao del Sur."*

Considering that the Municipalities of Cantilan and Madrid are both contesting the right to receive the share pursuant to the abovecited provision, the determination of which municipality is the rightful recipient of the said shares is more appropriate for the courts of law to settle.

WHEREFORE, we regret to deny your request inasmuch as the underlying issue on territorial jurisdiction is beyond the jurisdiction of this Bureau to resolve. It is but prudent for the Bureau to hold in abeyance the release of shares in the proceeds from the development and utilization of the national wealth until the issue has been judicially decided on the merits declaring the Municipality of Madrid to be the rightful local government unit to receive the shares.

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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