December 9, 2019

BIR RULING NO. 779-19

PD 269; BIR Ruling No. 398-13

Dinagat Island Electric Cooperative, Inc.
Justiniana, San Jose, Dinagat Island

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 3, 2011, requesting for a tax exemption certification by way of ruling pursuant to Revenue Memorandum Circular (RMC) 72-2003 and Presidential Decree (PD) No. 269.

It is represented that Dinagat Island Electric Cooperative, Inc. (DIELCO) with Tax Identification Number (TIN) 000-000-000-000 is registered with the National Electrification Administration (NEA) as a non-stock, non-profit membership electric cooperative bearing Certification No. 133, issued on August 29, 1990; 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: x x x"

However, PD No. 1955 was enacted by then President Ferdinand E. Marcos. It withdrew all exemptions 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****: x x x"*

Based on the foregoing, while FIRB Resolution No. 24-87 restored the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39), said Resolution, 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, this Office opines that DIELCO's income from its electric service operations is now subject to income tax pursuant to said FIRB Resolution No. 24-87.

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Beginning January 1, 2021, DIELCO 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, 2020, the thirtieth full calendar year after the date of the cooperative's organization [1] 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;

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 12% VAT on their gross receipts. Provided, however, that sale of power or fuel generated

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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 also subject to VAT on their gross receipts pursuant to R.A. 9337, as implemented by RR 16-2005, as amended.

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

Footnotes

1. DIELCO was organized on August 29, 1990, hence, the exemption granted under PD 269 already ended on December 31, 2020 which is "December 31 of the thirtieth full calendar year after the date of its organization."

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