REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

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NOV 25 2020

REVENUE MEMORANDUM CIRCULAR NO. 124-2020

SUBJECT : Clarifying Certain Provisions of Revenue Memorandum Order No. 76-2010 in Relation to the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of Republic Act No. 9520, Otherwise Known as the "*Philippine Cooperative Code of 2008*" and Other Related Revenue Issuances

TO : All Internal Revenue Officers, Employees and Other Concerned

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Several issues and concerns have reached the National Office of the Bureau of Internal Revenue (BIR) involving the Cooperative sector nationwide. In a series of discussions among the BIR, the Cooperative Sector and Cooperative Development Authority (CDA), in coordination with the Committee on Cooperatives Development of the House of Representatives, the parties agreed that a Technical Working Group (TWG) in the BIR and similarly in the Cooperative sector should be created to efficiently and expeditiously act on the identified issues and concerns.

Consequently, the BIR issued Revenue Special Order (RSO) Nos. 112-2020 and 183-2020 dated February 18, 2020 and June 10, 2020, respectively, establishing the BIR-TWG to address the pressing issues and concerns of the Cooperative Sector. Thereafter, a series of TWG meetings and workshops were conducted nationwide to hear and identify the Cooperative sector's particular issues and concerns and to resolve the same.

In view thereof, this Circular is hereby issued to clarify certain issues and concerns raised by the Cooperative sector during the TWG discussions and workshops, as a result of the collaborative efforts of the House of Representative Committee on Cooperatives Development, the CDA and the BIR.

Q1: What are the requirements for securing a Certificate of Tax Exemption (CTE)?

A1: Based on existing revenue issuances, the duly accomplished Application for Certificate of Tax Exemption for Cooperatives (BIR Form No. 1945) shall be submitted to the concerned Office with the following documentary requirements:

For New Application:

1. Certified True Copies of the Articles of Cooperation and By-Laws, as certified by the CDA;
2. Certified True Copy of the new Certificate of Registration issued by the CDA under the new Cooperative Code, as certified by the CDA;

3. Certified True Copy of the current Certificate of Good Standing issued by the CDA effective on the date of application;
4. Certified True Copy of the BIR Certificate of Registration of the Cooperative; and,
5. Original Copy of Certification under Oath of the List of Cooperative Members with their respective Taxpayer Identification Number (TIN), if already available, and their capital contributions prepared by the authorized official of the Cooperative.

For Renewal:

1. Certified True Copies of the Latest Articles of Cooperation and By-Laws, as certified by the CDA;
2. Certified True Copy of the new Certificate of Registration issued by the CDA under the new Cooperative Code, as certified by the CDA;
3. Certified True Copy of the current Certificate of Good Standing issued by the CDA effective on date of application; and
4. Certified True Copy of Latest financial statements of the immediately preceding year duly audited by a BIR accredited independent certified public accountant.

Q2: What are the obligations of cooperatives with duly issued CTEs?

A2: All registered cooperatives with duly issued CTEs shall:

1. Communicate immediately any change in or amendment to its Articles of Cooperation or By-Laws to the RDO where the cooperative is registered for update of its registration details;

2. Submit on a yearly basis to the appropriate RDO the following information or documents together with the filing of the cooperative's Annual Income Tax Return due on or before the 15th day of the fourth month following the close of the calendar year:

   a. ***Certified True Copy*** of the current and effective Certificate of Good Standing from CDA;

   b. ***Original Copy*** of certificate under oath by the Chairperson/General Manager stating the following:
      (1) the type/category of cooperative and the principal activities/business transactions it is engaged in;
      (2) that the cooperative is transacting business with members only or both members and non-members, whichever is applicable;
      (3) the amount of the accumulated reserves as of the year end concerned;
      (4) the amount of net surplus for the year; and
      (5) that at least 25% of the net surplus is returned to the members in the form of interest on share capital and/or patronage refund;

   c. ***Original Copy*** of yearly summary of records of transactions clearly showing which transactions correspond to members; or in case the

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cooperative deals with members and non-members, yearly summary of records of transactions clearly showing which transactions correspond to members and non-members; and

d. ***Original Copy*** of Certification under oath by the Chairperson/General Manager of the List of Active and Inactive Members, their respective TINs, and the Share Capital Contribution of each member as of the year end concerned.

Q3: Upon the filing of application for CTE, in case the TINs of the members cannot be supplied yet, will that result in the denial of the application?

A3: No. If the TINs of the cooperative members cannot be supplied because they are not yet available at the time of the application for CTE, the concerned Office shall nonetheless allow the processing and issuance/revalidation of CTEs of qualified cooperatives, *provided,* that in lieu thereof, the cooperative shall submit, an original copy of Certification under oath of the list of cooperative members, with their full name and capital contribution. Take note, however, that cooperatives which have been granted CTE are still required to complete and submit to the concerned Office the required TINs of their members within six (6) months from the issuance of the CTE.

The non-submission by the cooperatives of the members' TIN requirement within six (6) months from the issuance of the CTE, without justifiable reason/s, shall be a ground for the revocation of the CTE pursuant to RMC No. 102-2016.

Q4: Is there a legal basis for the TIN requirement of the members of cooperative?

A4: Yes. Based on Section 236(I) of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 7-2012, any person required to make, render or file a return, statement **or other document** shall be supplied with or assigned a TIN for proper identification for tax purposes.

Q5: How will the Cooperative secure TIN for its active members?

A5: To assist its members in securing TIN, the Cooperative, with proper authorization from the members, may apply for the issuance of TIN on behalf of its members by collating the duly accomplished BIR Forms 1904 of the members, together with a photocopy of any identification issued by any authorized government body (*e.g.,* birth certificate, voter's ID, community tax certificate or *cedula*, passport, driver's license, senior citizen's ID, etc.) or any identification which shows the name, address and birthdate of the member. These shall be submitted to the concerned RDO for the processing and issuance of the TIN.

An option to expedite the process is for the cooperative to apply for an electronic Registration (eREG) system access through the Office of the Assistant Commissioner, Client Support Service in the BIR National Office. This will enable the authorized cooperative to issue TIN to their members through the eREG system. The authorized official of the cooperative shall submit an Application for eREG Access together with a Certification under Oath of the List of Active and Inactive Members and their capital contributions.

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Q6: Who are considered Inactive Members?

A6: The following are considered as inactive members, as defined by CDA:

1. Members who are declared not in good standing;
2. Members whose whereabouts are not known for the last continuous period of six (6) months;
3. Members who do not have transaction or not patronizing any business of the cooperative for the continuous period of at least six (6) months;
4. Members who are not participating in the activities of the cooperative held within the period of six (6) months.

The cooperative need not secure the TINs of inactive members.

Q7: How does the status of an inactive member revert into an active member?

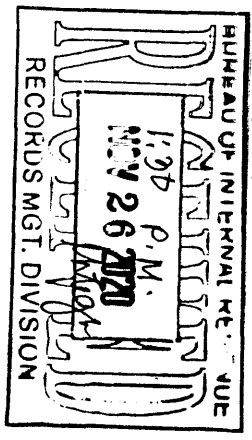
A7: The status of an inactive member reverts into an active member as soon as he transacts business, patronizes and/or participates with the activities of the cooperative and his whereabouts are known. Accordingly, the cooperative shall apply for the TIN of such active member.

Q8: What is the prevailing rule on the exemption of interest earned from the savings and time deposit accounts of members of the cooperative engaged in lending?

A8: Interest income earned from the savings and time deposit accounts of members of cooperative engaged in lending are exempt from any taxes pursuant to Article 60 and 61 of Republic Act (RA) No. 9520 which provides that "***transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax***".

Q9: What is the prevailing rule on the exemption from documentary stamp tax on transactions between cooperative and its members?

A9: Transactions between cooperative and its members are not subject to documentary stamp tax (DST). Both the cooperative and its members are not liable to pay DST on these transactions. Article 60 and 61 of Republic Act (RA) No. 9520 provides that, "**transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax".**



This is reiterated in Section 7 of the Joint IRR stating that duly registered cooperative dealing/transacting business with members only shall be exempt from paying any taxes and fees, including but not limited to, documentary tax imposed under Title VII of the NIRC, as amended,"

Finally, Section 11 of the Joint IRR states that all members of cooperative shall be liable to pay all the necessary internal revenue taxes under the NIRC, as amended, except any tax and fee but not limited to final tax on member's deposit (otherwise known as share capital with cooperatives and documentary tax on transactions of members with the cooperative

Q10: Are statutory contributions made by the Cooperatives as employer excluded from the gross income?

A10: Yes. Contributions made by a cooperative as the employer's share to GSIS, SSS, Medicare and Pag-ibig contributions are excluded from the gross income and claimed as an allowable deduction under Section 34 (A)(1)(a) of the NIRC, as amended.

Q11: Is the cooperative exempt from the assessment of the 1% and 2% creditable withholding tax on isolated purchases of not more than P10,000 each from non-regular suppliers?

A11: Yes. The cooperative is exempt from the assessment of the 1% and 2% creditable withholding tax provided that it is not considered a Top Withholding Agent under Section 2.57.2(I) of RR No. 2-98 as amended by Section 2 of RR No. 11-2018 and RR No. 7-2019. However, if the cooperative is considered as a Top Withholding Agent, all purchases made with its regular suppliers or any single purchase of more than P10,000.00 shall be subject to withholding tax.

The term "regular suppliers" refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of the amount per transaction, either in the previous year or the current year.

Q12: What are the criteria for a taxpayer/cooperative to be selected for audit?

A12: A revenue issuance on BIR's audit program is issued to prescribe policy guidelines for selection criteria of possible candidates for audit/investigation of tax returns, to enhance taxpayers' voluntary compliance by encouraging the correct payment of internal revenue taxes through the exercise of the enforcement function of the Bureau.

In the absence of an audit program, the Commissioner of Internal Revenue has the authority to examine and assess pursuant to Section 6 (A) of the NIRC under RA No. 8424 and Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration Inclusion" (TRAIN) Law.

> "Section 6 (A) *Examination of Returns and Determination of Tax Due*- After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."

Relative thereto, cooperatives which transact business with both members and non-members and whose accumulated reserves and undivided net savings is more than Ten Million Pesos (Php 10,000,000.00) shall be prioritized for audit/ investigation by Revenue District Offices having jurisdiction over the said cooperatives.

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Further, other cooperatives with income not related to the main/principal business/es under their Articles of Cooperation shall likewise be among those covered for the priority audit, whether such cooperatives deal purely with members or both members and non-members.

Q13: What should a cooperative do in case it receives a Preliminary Assessment Notice (PAN), a Formal Letter of Demand/Final Assessment Notice (FLD/FAN), or a Final Decision on Disputed Assessment (FDDA) from the BIR?

A13: The cooperative's receipt of a PAN, a FLD/FAN or a FDDA, as the case may be, is not the finality of a tax assessment. Like an ordinary taxpayer, under Section 228 of the NIRC of 1997, as amended, and its implementing rules and regulations, the cooperative has the following remedies - if it believes it has factual and legal grounds - to question the tax assessment:

a.) upon receipt of the PAN, it has a period of fifteen (15) days to respond to it; otherwise, it will be considered in default, in which case a FLD/FAN shall be issued;

b.) upon receipt of the FLD/FAN, it has a period of thirty (30) days to protest it either by filing a motion for reconsideration or reinvestigation; otherwise, the assessment shall become final, executory and demandable;

c.) upon receipt of the FDDA, it has a period of thirty (30) days either to appeal to the Court of Tax Appeal or to protest it by filing a request for reconsideration to the Commissioner of Internal Revenue; otherwise, the assessment shall become final, executory and demandable;

d.) upon receipt of the Decision of the Commissioner of Internal Revenue on its administrative protest, it has a period of thirty (30) days to appeal to the Court of Tax Appeals; otherwise, the assessment shall become final, executory and demandable.

All concerned are hereby enjoined to be guided accordingly and to give this Circular as wide a publicity as possible.

CAESAR R. DULAY
Commissioner of Internal Revenue

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