REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

November 25, 2009

REVENUE MEMORANDUM CIRCULAR NO. 64-2009

SUBJECT: Revocation of Tax Exemption Status of Davao Contractors Development Cooperative (DACODECO)

TO : All Internal Revenue Officers and Others Concerned

There are situations when taxpayers that have been granted tax incentives or exemptions have taken advantage of their favoured tax treatment. Abuse and irregularities that may arise include extending the tax exemption entitlement to non-qualified activities. An example of this is the case of Davao Contractors Development Cooperative (DACODECO). The cooperative was discovered to have not complied with the conditions as a tax exempt credit cooperative after its registration. DACODECO amended its articles to include a business of being engaged in engineering construction, manpower service and distribution of construction materials. Thereafter, DACODECO engaged in said businesses by transacting with non-members of DACODECO. These transactions are basically profit oriented, and does not anymore serve the objectives and purpose of a cooperative. As a result, the Commissioner of Internal Revenue revoked its tax exemption status. The revocation letter is published hereunder:

"June 1, 2009

DAVAO CONTRACTORS DEVELOPMENT
COOPERATIVE (DACODECO)
Ground Floor, Valgosons Building
City Hall Dive, Davao City, 8000

Attention: **Engr. Edgar L. Chavez**
Chairman of the Board

Gentlemen:

This refers to BIR Ruling No. ECCP-063-2008 regarding the tax exemption status of Davao Contractors Development Cooperative (DACODECO).

Documents from Revenue Region No. 19 Davao City show that tax exemption privileges as a cooperative which was granted on June 25, 2001 per BIR RDA-RR No. 19 Ruling No. 23-01 was revoked as evidenced by the letter dated August 23, 2007 issued by then Regional Director Marcelinda Omila-Yap for your failure to comply with the conditions under which you have been granted tax exemption. Findings of said Region are hereby stated as follows:

"Please be informed that based on the investigation conducted by our BIR District Office pursuant to Letter of Authority No. 47574 dated 24 May 2007, it was discovered that the

conditions for which you have been granted a tax exemption by this Office had not been kept. ***While you originally registered as a credit cooperative, you later caused your articles to be amended to enable your organization to be engaged in engineering construction and manpower services and in the distribution of construction materials to local government units (LGUs), including the City Government of Davao, which are non-members of DACODECO. Your total revenues in 2005 alone, arising from your construction business, had already reached 169.5 Million Pesos. Such activities, which are basically profit-oriented similar to a taxable partnership or corporation engaged in construction, no longer serve the objectives and purpose of a cooperative, and are therefore subject to the regular taxes imposed under the Tax Code.***

In fact, in your 2005 report to the Cooperative Development Authority from an original membership of fifteen (15) co-operators, there now twenty-one (21) co-operators and sixty-one (61) associate members listed as contractors. Based on the composition of your membership, it is apparent that your business transactions have deviated from the essence of cooperativism, having engaged in transacting business to non-members, such as the LGUs.

It was likewise discovered based on your 2005 financial statement that you have no construction equipment and assets. The fact that your construction services are being undertaken by sub-contractors is indicative of lack of self-reliance.

Your financial statements in the years 2004, 2005 and 2006 likewise disclose that your net surplus, in excess of your statutory reserves, were not distributed to your members but were reverted to a liability account of DACODECO in violation of the condition for exemption. To be exempted, it is essential that at least twenty-five percent (25%) of your net income are returned to the members in the form of interest and/or patronage refund.

In the letter dated July 30, 2007, the said region gave you the opportunity to show cause why your tax exemption certificate should not be revoked by submitting countervailing proof to its findings. However, said notice was remained unanswered. As a result thereof, said Region revoked your tax exemption privilege as a cooperative, the dispositive portion of which states:

"WHEREFORE, premises considered, this Office hereby ***revokes your tax exemption privilege as a cooperative pursuant to R.A. 6938*** *which was granted on June 25, 2001 per BIR RDA-RR No. 19 Ruling No. 23-01. Hence, you shall no longer be exempted from any and all fees imposed under the internal revenue laws and other tax laws.*

This likewise serves as an authority to the LGUs to withhold taxes on government money payments to your organization at the rate of two (2%) percent of income tax, and five (5%) final value-added tax on your gross receipt."

Despite abovementioned revocation, you request for another tax exemption certificate in this Office in your letter dated May 12, 2008 without declaring the previous revocation for tax exemption by the said region. As a consequence of the facts that you represented, this Office issued BIR Ruling No. ECCP-063-2008.

Furthermore, as attested by the letter dated February 26, 2009 issued by the Office of the Municipal Mayor of Matanao, DACODECO's bid and contract price with the said municipality included tax. This serves as your admission -that you are subject to tax on your transactions.

In reply, please be informed that after a careful re-study of BIR-Ruling Bo. ECCP-63-2008 and the Region's findings, this office has finally arrived at the conclusion that the same has no factual basis. Accordingly, **BIR Ruling No. ECCP-063-2008 is hereby revoked**. This revocatory ruling is issued on the basis of the findings made by Revenue Region No. 19 Davao City and which were forwarded to this Office.

Very truly yours,

(Original Signed)
SIXTO S. ESQUIVIAS IV
Commissioner"

All internal revenue officials and employees are hereby enjoined to give this Circular as wide a publicity as possible.

(Original Signed)
JOEL L. TAN-TORRES
Senior Deputy Commissioner