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

Section 30 (J) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14
BIR Ruling No. 466-2014
0720-2019
DEC 02 2019

BOTILON IRRIGATORS' ASSOCIATION, INC.
Cabasagan, Matanao, Davao Del Sur 8003

Attention: <u>ALFREDO O. PASAGDAN</u>
President

Gentlemen:

This refers to your letter dated October 3, 2016 applying in behalf of **BOTILON IRRIGATORS' ASSOCIATION, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (J) of the National Internal Revenue Code of 1997, as amended.

It is represented that of **BOTILON IRRIGATORS' ASSOCIATION, INC.** with BIR Taxpayer's Identification Number (TIN) and Certificate of Registration Number OCN dated February 18, 2013, is a non-stock corporation duly organized and existing under the laws of the Republic of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Company Registration No. ; and that the purposes[1] for which the association was incorporated are:

1. *To serve as a channel for the government and private agencies in providing technical and financial assistance and other essential service concerning irrigated agriculture;*

2. *To promote continuous group action/cooperative work thereby enhancing the execution of farm activities to benefit the water users;*

3. *To cooperate and eventually assume the operation and maintenance of the irrigation system or a portion thereof under such terms and conditions that the NIA Board may impose; and*

4. *To perform all and everything necessary for the attainment of the purpose or in the furtherance of any of the corporate powers above set forth.*

In reply, please be informed that Section 30 of the National Internal Revenue Code of 1997, as amended, enumerates the non-stock and/or non-profit corporations/associations/ organizations that are exempt from income tax in respect to income received by them as such. Section 30 (J) of the National Internal Revenue Code of 1997, as amended, provides, viz:

"Sec. 30. Exempt from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:

[1] Second Provision, Articles of Incorporation of Botilon Irrigators' Association, Inc.

xxx xxx xxx

(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; xxx"

"Non-stock" means "*no part of its income is distributable as dividends to its members, trustees, or officers*" and that any profit "*obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized*".[2] "Non-profit" means that "*no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit*".[3]

Revenue Memorandum Circular (RMC) No. 51-2014 has clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the National Internal Revenue Code of 1997, as amended, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered "inurements" of such nature:

1. *The payment of compensation, salaries, or honorarium to its trustees or organizers; xxx.*

In the submitted certifications of **BOTILON IRRIGATORS' ASSOCIATION, INC.**, it was disclosed that the Board of Trustees are receiving incentives for their services rendered to the association[4]. Also, as shown in its submitted Financial Statements, the Board of Trustees are receiving honorarium.

The incentives and honorarium being received by the members of the Board of Trustees are considered distributions of the equity (including the net income) of **BOTILON IRRIGATORS' ASSOCIATION, INC.** These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit corporation. These acts violate the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Thus, **BOTILON IRRIGATORS' ASSOCIATION, INC.** cannot be qualified as a non-stock, non-profit corporation or association under Section 30 (J) of the National Internal Revenue Code of 1997, as amended.

Please bear in mind that, "*being a non-stock and/or non-profit corporation does not, by this reason alone, completely exempt an institution from tax.*"[5] Thus, "*statutes granting tax exemptions are construed **strictissimi juris** against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed.*"[6] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **BOTILON IRRIGATORS' ASSOCIATION, INC.** to be exempted from income tax on its income as a Section 30 (J) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, of **BOTILON IRRIGATORS' ASSOCIATION, INC.** shall be treated as an ordinary corporation subject to

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[2] Section 87, Corporation Code

[3] CIR vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960 dated 26 September 2012

[4] Certification under Oath as to the Association's disposition of income and Modus Operandi as to the Association's contemplated expenditures, both by Alfredo O. Pasagdan, the IA President

[5] CIR vs. St. Luke's Medical Center, Inc. [G.R. No. 195909 & G.R. No. 195960, 26 September 2012].

[6] Quezon City and The City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation [G.R. No. 166408, 6 October 2008].

thirty percent (30%) income tax rate pursuant to Section 27 (A) and other internal revenue taxes imposed by the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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COPY FURNISHED:

REVENUE REGION NO. 19 – Davao City
Attention: Revenue District No. 115 – Digos City