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

Section 30 (E) of the NIRC of 1997, as amended; RMO No. 20-2013; RMC No. 051-14
BIR Ruling No. 466-2014
560-2017
12-6-2017

DEFENDERS OF BATAAN AND CORREGIDOR, INC.
3rd Floor, Veterans Center, Camp Aguinaldo,
Quezon City

Attention: RAFAEL E. EVANGELISTA
National Commander

Gentlemen:

This refers to your letter dated March 31, 2014 applying in behalf of **DEFENDERS OF BATAAN AND CORREGIDOR, INC.** for tax exemption certificate being enjoyed by non-stock, non-profit corporation or association under Section 30 (E) of the National Internal Revenue Code (NIRC) of 1997, as amended, which was forwarded to this Office by Revenue Region No. 7, Quezon City, through 3rd Indorsement dated November 7, 2014.

It is represented that **DEFENDERS OF BATAAN AND CORREGIDOR, INC.** with BIR Taxpayer's Identification No. (TIN) and Certificate of Registration No. dated October 2, 2002, is a non-stock, non-profit association 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 uphold and defend the Constitution of the Republic of the Philippines;*

2. *To re-dedicate our lives to the service of God, our country and our fellowmen;*

3. *To live up to, foster and perpetuate the noble traditions and ideals of our people; more particularly among our corporate members, namely, the Philippine Army (USAFFE) veterans of the Battles of Bataan and / or Corregidor, their surviving spouses and direct descendants;*

4. *To promote peace and good will on earth and maintain law and order; and*

5. *To strengthen the bonds of comradeship and keep alive the memories of our military service in Bataan and Corregidor; to help one another and those whom our deceased brothers-in-arms left behind; and to safeguard and transmit to posterity the principles of justice, freedom, and democracy.*

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 (E) of the National Internal Revenue Code of 1997, as amended, provides, viz:

[1] Second, Amended Articles of Incorporation

> *"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:*
>
> *xxx xxx xxx*
>
> *(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;"*
>
> *xxx xxx 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, 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 documents of **DEFENDERS OF BATAAN AND CORREGIDOR, INC.**, it was disclosed that the Board of Trustees are entitled to per diems. Section 8, Article IV, of the New By-Laws states that:

> *"Section 8. Compensation. Trustees as such shall not receive any compensation, but shall be entitled to per diems for attendance at any regular or special meeting as may from time to time be fixed by the board."*

The giving of per diems to the members of the Board of Trustees is considered a distribution of the equity (including the net income) of **DEFENDERS OF BATAAN AND CORREGIDOR, INC.** This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. This act violates 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, **DEFENDERS OF BATAAN AND CORREGIDOR, INC.** cannot be qualified as a non-stock, non-profit corporation under Section 30 (E) 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.*"[4] 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.*

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

The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed."[5] ***(BIR Ruling No. 466-2014 dated November 19, 2014)***

In view of the foregoing, the request of **DEFENDERS OF BATAAN AND CORREGIDOR, INC.** to be exempted from income tax on its income as a Section 30 (E) corporation is hereby denied as it failed to prove that it is a non-profit corporation. Therefore, **DEFENDERS OF BATAAN AND CORREGIDOR, INC.** shall be treated as an ordinary corporation subject to 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. 7 – Quezon City
Attention: Revenue District Office No. 40 – Cubao, Quezon City

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