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

Section 30(E) of the Tax Code of 1997
BIR Ruling No. 209-14
#032-2016 1-12-2016

HOLY ROSARY PRAYER & REFLECTION CENTER, INC.
Calumpang, Molo, Iloilo City

Attention: **REV. MO. MA. CELESTINE BANCAL, OP**
President

Gentlemen:

This refers to your letter dated December 16, 2013 duly indorsed by Revenue Region (RR) No. 11-Iloilo City requesting for the issuance of a certificate of tax exemption enjoyed by non-stock corporation or association organized and operated exclusively for charitable purposes under Section 30(E) of the Tax Code of 1997, as amended.

It is represented that Holy Rosary Prayer & Reflection Center, Inc. with Taxpayer's Identification No. , is a charitable corporation duly organized under the laws of the Philippines; that it is registered with the Securities and Exchange Commission (SEC) under Registration No. and that the purposes for which it was incorporated as appearing in its Articles of Incorporation are the following:

1. To provide a place conducive for prayer and reflection;
2. To assist people in their prayer and spiritual life;
3. To provide a place for group or individual retreats; and
4. To provide a place for conferences, seminars and workshops.

In support of its request, Holy Rosary Prayer & Reflection Center, Inc., has completely submitted on April 3, 2014 the following documents:

1) Letter application for tax exemption;
2) Certified true copy of the Certificate of Registration with the SEC;
3) Certified true copy of the Articles of Incorporation;
4) Certified true copy of the By-Laws;
5) BIR Certificate of Registration;
6) Original Copy of the Certification under Oath stating that there has amendments/changes in the Articles of Incorporation and By-laws;
7) Original Certification under Oath of the Treasurer certifying that the officers, executive officers and trustees does not receive compensation or fixed remuneration directly or indirectly from any income derived from donations to the agency;

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8) Original Copy of Certificate issued by RDO stating that the corporation "is not subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificates, collection proceedings nor a judicial appeal";
9) Certified true copies of the Annual Income Tax Returns and Financial Statements for the last three (3) years of operation;
10) Original Copy of the Statement under Oath as to its Modus Operandi; and
11) *Other pertinent documents*

In reply, please be informed as follows:

Income Tax

Section 30 (E) of the 1997 Tax Code, 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:*
>
> *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"*

Under the above-quoted provision, a non-stock 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 is exempt from income taxation. *(BIR Ruling No. 138-11 dated April 29, 2011)*

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. [G.R. No. 195909 & G.R. No. 195960, 26 September 2012]*, held:

> *"Section 30(E) of the NIRC provides that a charitable institution must be:*
>
> *(1) A non-stock corporation or association;*
> *(2) Organized exclusively for charitable purposes;*
> *(3) Operated exclusively for charitable purposes; and*
> *(4) 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.*
>
> *Thus, both the organization and operations of the charitable institution must be devoted "exclusively" for charitable purposes. The organization of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive documents. Section 30(E) of the NIRC specifically requires that the corporation or association be nonstock, which is defined by the Corporation Code as "one where no part of its income is distributable as dividends to its members, trustees, or officers" and that any profit "obtain[ed] as an incident to its operations shall, whenever necessary or proper, be used for the*

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furtherance of the purpose or purposes for which the corporation was organized." However, under Lung Center, any profit by a charitable institution must not only be plowed back "whenever necessary or proper," but must be "devoted or used altogether to the charitable object which it is intended to achieve."

The operations of the charitable institution generally refer to its regular activities. Section 30(E) of the NIRC requires that these operations be exclusive to charity. There is also a specific requirement that "no part of [the] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person."

xxx

"However, the last paragraph of Section 30 of the NIRC qualifies the words "organized and operated exclusively" by providing that:

> *Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.*

In short, the last paragraph of Section 30 provides that if a tax exempt charitable institution conducts "any" activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the "[n]on-stock corporation or association [must be] organized and operated exclusively for . . . charitable . . . purposes . . . ."

In interpreting the term "exclusive" as used in the provision, the Supreme Court, citing the case of Lung Center of the Philippines v. Quezon City (G.R. No. 144104, 29 June 2004), held:

> *"[e]xclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively." ... The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitution and the law. Solely is synonymous with exclusively."*

Holy Rosary Prayer & Reflection Center, Inc. is a corporation contemplated under Section 30 (E) of the Tax Code of 1997, as amended. Accordingly, it is exempt from the payment of tax on income received by it as such organization, provided, that no part of its net income or assets shall belong to, or inure to the benefit of any member, organizer, officer or any specific person.

However, it is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof, which income should be returned for taxation, thus, *the income of*

Holy Rosary Prayer & Reflection Center, Inc. derived from group or individual retreats and conferences, seminars and workshops will be subject to the regular corporate tax rate of 30%.

Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax: provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 7 ½ % final withholding tax pursuant to Section 27(D)(1) in relation to Section 57(A), both of the Tax Code of 1997. *(BIR Ruling No. 209-14 dated June 19, 2014)*

It should be understood that the said exempt corporation/association shall be constituted as withholding agent for the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 79 (A), Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the withholding tax pursuant to Section 57 of the Tax Code of 1997, also as implemented by Revenue Regulations No. 2-98, as amended. *(BIR Ruling No. 209-14 dated June 19, 2014)*

Value-Added Tax

Moreover, the tax exemption granted to it as a non-stock, non-profit corporation under Section 30 of the Tax Code of 1997 covers only income taxes for which it is directly liable.

Section 105 of the Tax Code of 1997 provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the same Code.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

Accordingly, if Holy Rosary Prayer & Reflection Center, Inc. is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, in general, it shall be liable for VAT. *(BIR Ruling No. 209-14 dated June 19, 2014)*

Notwithstanding that it is a non-stock, non-profit corporation, its purchase of goods or properties or services and importation of goods shall nevertheless be subject to the 12% VAT pursuant to Section 107 of the said Code. *(BIR Ruling No. 209-14 dated June 19, 2014)*

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services. Thus, the shifting of the VAT to it does not make it the

person directly liable and therefore, it cannot invoke its tax exemption privilege under Section 30 of the Tax Code of 1997 to avoid the passing on or shifting of the VAT.

Revenue from contributions and donations, not being derived from sale of services or sale of goods made in the course of business but rather in connection with its non-stock, non-profit activities, is exempt from the 12% VAT.

Donor's Tax

In as much as Holy Rosary Prayer & Reflection Center, Inc. is a charitable organization, donations to it are exempt from the payment of donor's tax pursuant to Section 101 (A) (3) of the Tax Code of 1997, as amended, subject to the condition that not more than thirty percent (30%) of said gift shall be used for administration purposes. *(BIR Ruling No. 209-14 dated June 19, 2014)*

Deductibility of Donation

Section 3 of RR13-98 provides:

SECTION 3. Donations to Accredited Non-stock, Non-profit Corporations/NGOs. — Donations to accredited non-stock, non-profit corporations/NGOs shall be entitled to the following benefits:

(1) Limited Deductibility. — Donations, contributions or gifts actually paid or made within the taxable year to accredited non-stock, non-profit corporations shall be allowed limited deductibility in an amount not in excess of ten percent (10%) for an individual donor, and five percent (5%) for a corporate donor, of the donor's income derived from trade, business or profession as computed without the benefit of this deduction.

(2) Full Deductibility. — Donations, contributions or gifts actually paid or made within the taxable year to accredited NGOs shall be allowed full deductibility, subject to the following conditions:

(i) The accredited NGO shall make utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated, not later than the fifteenth (15th) day of the third month after the close of the accredited NGOs taxable year in which contributions are received, unless an extended period is granted by the Secretary of Finance, upon recommendation of the Commissioner.

For this purpose, the term "utilization" shall have the meaning as defined under Sec. 1(c) of these Regulations.

(ii) The level of administrative expenses of the accredited NGO, shall, on an annual basis, not exceed thirty percent (30%) of the total expenses for the taxable year;

(iii) In the event of dissolution, the assets of the accredited NGO, would be distributed to another accredited NGO organized for similar purpose or purposes, or to the State for public purpose, or purposes, or to the state for public purpose, or would be distributed by a competent court of justice to another accredited NGO to be used in such manner as in the judgment of said court shall best accomplished

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the general purpose for which the dissolved organization was organized;

(iv) The amount of any charitable contribution of property other than money shall be based on the acquisition cost of said property;

(v) All the members of the Board of Trustees of the non-stock, non-profit corporation, organization or NGO do not receive compensation or remuneration for their service to the aforementioned organization.

Furthermore, Section 1(a) of Revenue Regulations No. 13-98 provides that a:

"Non-stock, non-profit corporation or organization" shall refer to a corporation or association/organization referred to under Section 30 (E) and (G) of the Tax Code created or organized under Philippine laws exclusively for one or more of the following purposes:

1. *religious;*
2. *charitable;*
3. *scientific;*
4. *athletic;*
5. *cultural;*
6. *rehabilitation of veterans; and*
7. *social welfare*

no part of the net income or asset of which shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

b) "Non-government Organization (NGO)" — shall refer to a non-stock, non-profit domestic corporation or organization as defined under Section 34 (H)(2)(c) of the Tax Code organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual.

Foregoing considered, donors can avail of the full deductibility only for donations, contributions or gifts actually paid or made within the taxable year to accredited NGOs.

Accordingly, for purposes of full deductibility from the taxable business income of its donor, Holy Rosary Prayer & Reflection Center, Inc. must first be accredited with the Philippine Council for NGO Certification, Inc. (PCNC) which has been duly designated by the Secretary of Finance as the Accrediting Entity pursuant to Memorandum of Agreement dated January 29, 1998 executed by and between the Secretary of Finance and PCNC's Interim Chairman.

For further inquiries on the accreditation and certification process, please visit PCNC at 6/F, SCC Building, CFA-MA Compound, 4427 Interior Old Sta. Mesa, 1016 Manila or call their office at 715-9594, 715-2756, 782-1568 and 715-2783 (telefax). You may also visit their website: http://www.pcnc.com.ph or email them at pcnc@pldtdsl.net.

Moreover, Holy Rosary Prayer & Reflection Center, Inc. is required to file on or before the 15th day of the fourth month following the end of the accounting period

a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating its gross income and expenses incurred during the preceding period and a certificate showing that there has not been any change in its By-laws, Articles of Incorporation, manner of operation and activities as well as sources and disposition of income. *(BIR Ruling No. 209-14 dated June 19, 2014)*

Under Section 235 of the Tax Code of 1997, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organization or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which it has been granted tax exemptions or tax incentives, and its tax liabilities, if any.

Finally, it is subject to the payment of the annual registration fee of PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the Association is registered [Revenue Memorandum Circular (RMC) No. 76-2003].

It is requested that a copy of this letter of exemption be attached to the aforementioned Annual Information Return.

Please note that this tax exemption ruling shall be valid for a period of three (3) years from the date of issue, unless sooner revoked or cancelled.

The tax exemption ruling may be renewed upon filing of a subsequent application for Tax Exemption/Revalidation provided under the same requirements and procedures provided under Revenue Memorandum Order (RMO) No. 20-2013. Failure to renew the Tax Exemption Ruling shall be deemed a revocation thereof upon the expiration of the three (3)-year period. The new Tax Exemption ruling shall be valid for another period of thee (3) years unless sooner revoked or cancelled.

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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cc: Regional Director
Revenue Region 11-Iloilo City