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

Sec. 30 (G), Tax Code of 1997;
BIR Ruling No. 206-2013;
BIR Ruling No. 535-2012;
BIR Ruling No. 108-2011;
#047-2016
1-28-2016

Date

Galing Pook Foundation, Inc.
47 Malinis cor. Mahusay Sts.
UP Village, Diliman
Quezon City

Attention : Eddie G. Dorotan, MD
Executive Director

Gentlemen:

This refers to your letter dated November 13, 2013, as indorsed by the Regional Director of Revenue Region No. 7, Quezon City on December 16, 2013, requesting for the revalidation of a ruling on the tax exemption enjoyed by non-stock, non-profit corporations under Section 30(G) of the Tax Code of 1997, as amended.

It is represented that **Galing Pook Foundation, Inc.** with Taxpayer's Identification No. is a non-stock, non-profit corporation registered with the Securities and Exchange Commission (SEC) under Company Reg. No. ; and that the purposes for which it is organized is:

1. To search/select and recognize outstanding programs of local governments;
2. To help in capacity building of LGUs by translating winning programs into case studies, teaching materials, films, slides and video presentation;
3. To facilitate replication of the winning programs through the creation of learning laboratories that will serve as sources for policy agenda/reforms, theory/concept/model building on local government, and cross fertilization of learnings among LGUs;
4. To act as a resource institution on innovative local government programs and best practices.

In support of its request, **Galing Pook Foundation, Inc.** has completely submitted the following documentary requirements as prescribed under Revenue Memorandum Order (RMO) No. 20-2013 dated July 22, 2013:

1) Letter application for tax exemption;

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2) Certified true copy of the Articles of Incorporation which includes the following provisions:
   a. That the corporation is non-stock, non-profit;
   b. That the purpose for which it was created is one of those enumerated under Sec. 30(G) of the Tax Code of 1997, as amended;
   c. That no part of the income which the corporation may obtain as an incident to its operation shall be distributed as dividends to its members, trustees or officers; and
   d. That in case of dissolution, the designated beneficiary will be the University of the Philippines - National College of Public Administration and Governance thru the UP Public Administration Foundation.
3) Certified true copy of the By-Laws, which includes the following provision:
   a. That Members of the Board of Trustees shall not receive salaries for their services as Trustees or for services rendered to the Foundation;
4) Original copies of Certification under oath by executive officers of the association, as to: (i) all previous amendments/changes in the Articles of Incorporation and By-Laws; (ii) manner of activities and; (iii) sources and disposition of income if any of the association;
5) Certified true copy of the Certificate of Registration with the BIR;
6) Original copy of Certification under oath by Treasurer of the association, as to the amount of income, compensation, salaries or any emoluments paid by the association to its trustees, officers and other executive officers;
7) Original copy of the Certification issued by the RDO where the corporation is registered stating that it is not subject to any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings or judicial appeal;
8) Certified true copies of the Annual Income Tax Returns and Financial Statements of the association for the last three (3) years; and
9) Original copy of statement under oath by an executive officer of the corporation as to its modus operandi, which include: i) a full description of the past, present and proposed activities, ii) a narrative description of anticipated receipts and contemplated expenditures, and iii) a detailed description of all revenues which it seeks to be exempted from income tax.

In reply, please be informed as follows:

Income Tax

Section 30 (G) 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:

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xxx xxx

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare; xxx"

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

"... [T]o be exempt from taxes, Section 30 (G) of the NIRC requires that the institution be "operated exclusively" for social welfare.

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.... "It likewise qualifies the requirement in Section 30 (G) that the civic organization must be "operated exclusively" for the promotion of social welfare."

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

Galing Pook Foundation, Inc. falls within the purview of an organization/association contemplated under the above cited provision of law. Accordingly, it is exempt from the payment of income tax received by it as such organization. *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. (BIR Ruling No. 206-13 dated June 13, 2013 and BIR Ruling No. 535-12 dated August 29, 2012)*

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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 7½ % final withholding tax pursuant to Section 27 (D)(1) in relation to Section 57 (A), both of the Tax Code of 1997, as amended.

It should be understood that the said exempt corporation/association shall be constituted as a 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 (RR) 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. 080-11 dated March 15, 2011)*

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 **Galing Pook Foundation, 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. 060-11 dated March 4, 2011)*

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 Sections 106 to 108 of the said Code. *(BIR Ruling No. 052-11 dated February 25, 2011)*

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

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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 **Galing Pook Foundation, Inc.** is a social welfare 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.

Deductibility of Donation

Section 3 of RR 13-98 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.*

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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 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 accomplish 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 afore-mentioned 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.*

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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, **Galing Pook Foundation, 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, **Galing Pook Foundation, Inc.** is required to file on or before the fifteenth (15th) day of the fourth (4th) 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. 108-11 dated April 7, 2011)*

Under Section 235 of the Tax Code of 1997, as amended, any provision of existing general and special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives shall be subject to examination by the BIR for purposes of ascertaining compliance with the conditions under which 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 Foundation is registered. *[Revenue Memorandum Circular (RMC) No. 76-2003]*

It is requested that a copy of this Letter of Exemption be attached to the 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.

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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 three (3) 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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